150 U.S. 393

RECORD, CASE No. 15,302.

SUPREME COURT OF THE UNITED STATES.

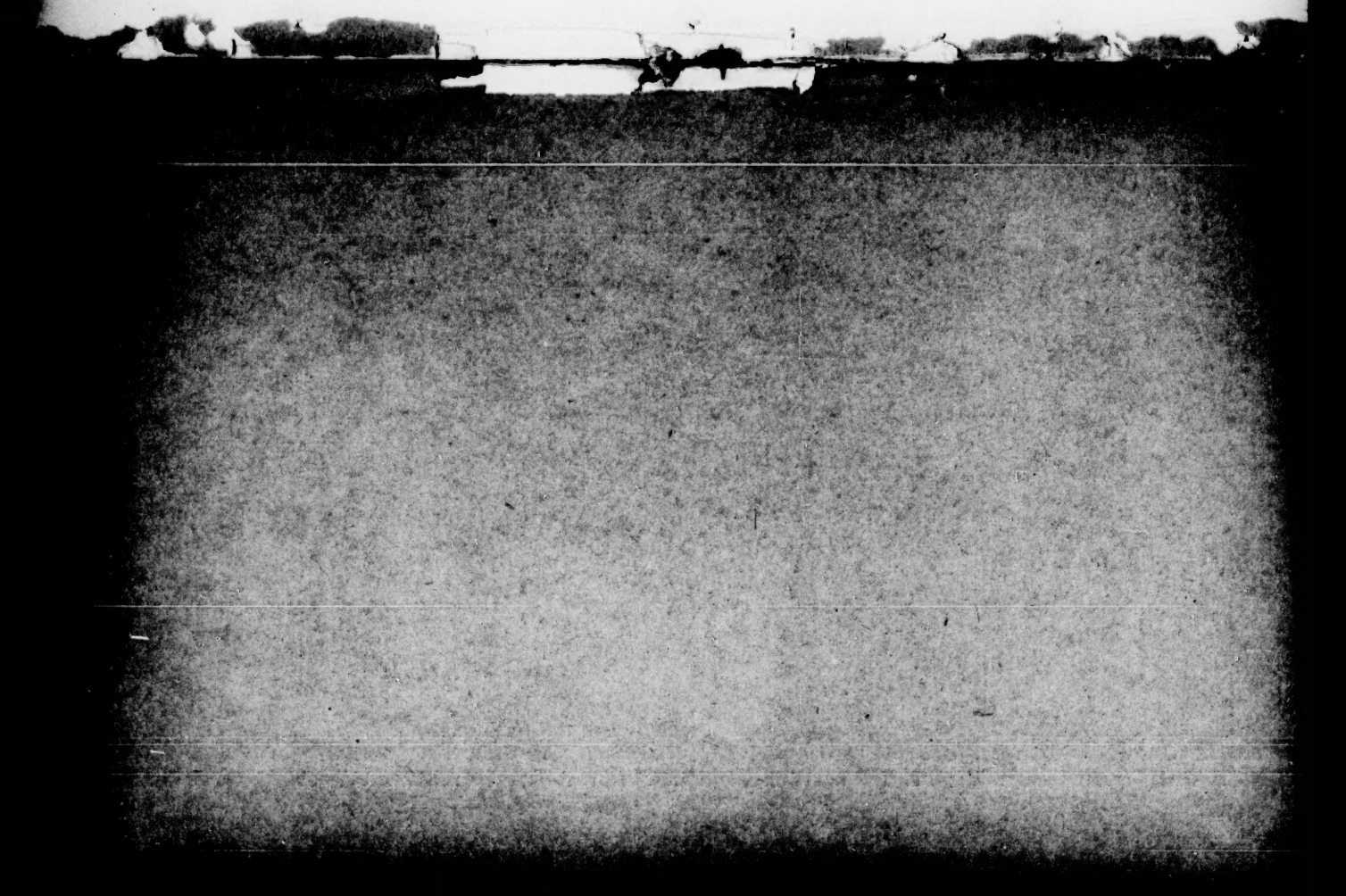
OCTOBER TERM, 1892.

TERM No., ~~1332~~ 925

EX PARTE: IN THE MATTER OF JAMES LENNON, APPELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED APRIL 24, 1893.



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1 THE UNITED STATES OF AMERICA, } ss:
Northern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States within and for the western division of the northern district of Ohio, begun and held at the city of Toledo, in said district, on the first Tuesday in December, being the 6th day of said month, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States of America the one hundred and seventeenth.

Among the proceedings then and there had were the following, to wit:

Ex parte: In the Matter of JAMES LENNON.

Be it remembered that heretofore, to wit, on the 20th day of April, A. D. 1893, a petition for writ of *habeas corpus* was filed herein in the clerk's office of said circuit court, and which said petition reads and is in the words and figures following, to wit:

Ex parte: In the Matter of JAMES LENNON.

To the judges of the circuit court of the United States for the northern district of Ohio, western division:

Your petitioner, James Lennon, shows that he is a citizen
2 and resident of the State of Ohio, and he is unlawfully held in custody and is restrained of his liberty in violation of the Constitution and laws of the United States by the marshal of the United States for the northern district of Ohio, in the western division, in the city of Toledo, under an order of the circuit court of the United States in said district and division.

Your petitioner further states that such order was made in a certain cause pending in said circuit court, wher-in The Toledo, Ann Arbor & North Michigan Railway Company, a corporation and citizen of the State of Michigan, was complainant and The Wheeling & Lake Erie Railway Company, The Lake Shore & Michigan Southern Railway Company, The Cincinnati, Hamilton & Dayton Railroad Company, The Columbus, Hocking Valley & Toledo Railway Company, The Toledo & Ohio Central Railway Company, The Cincinnati, Jackson & Mackinaw Railway Company, Albert G. Blair, Jacob S. Morris, citizens and residents of the State of Ohio and said district and division, and The Michigan Central Railroad Company, a citizen and resident of the State of Michigan, were defendants. A copy of the bill in said cause, which was filed in said court on March 11th, 1893, marked "Exhibit A," is hereto attached and made a part of this petition. The writ of subpœna prayed for in said bill was served upon the defendants on March 13th, 1893.

On the said 11th day of March, upon the said bill of complaint being filed, the complainant asked for an interlocutory injunction, which was granted upon notice to the defendants, at chambers, a

copy of which order of injunction, marked "Exhibit B," is hereto attached and *amde* a part of this petition. The said order of injunction was served on the said defendants on March 13th, 1893.

On the 18th day of March, 1893, the defendant The Lake Shore and Michigan Southern Railway Company made an application for an order of attachment against your petitioner,
3 with others, engineers and firemen in the employment of said last-mentioned railway company, as being in contempt of the restraining order aforesaid, a copy of which application for attachment is hereto attached, marked "Exhibit C," and made a part of this petition.

On the 18th day of March, 1893, the circuit court issued an order against your petitioner and others therein named to show cause forthwith why they should not be punished for contempt of said court in disobedience of its injunction, a copy of which order, marked "Exhibit D," is hereto attached and made a part of this petition.

Said last-named order was served upon your petitioner on March 18th, 1893.

Your petitioner appeared before said circuit court in obedience to said order, and thereupon such proceedings were had that your petitioner was adjudged to be in contempt of the circuit court in disobeying said order of injunction. Said order adjudging him in contempt, marked "Exhibit E," is hereto attached and made a part of this petition.

In such proceedings evidence was offered, of which the following transcripts, marked "Exhibit F," are hereto attached and made a part of this petition.

And said evidence was all the evidence submitted at the hearing.

Your petitioner further states and alleges, as he is advised, that the said circuit court had no jurisdiction or lawful authority to cause the arrest of your petitioner nor to proceed against him in manner as aforesaid, and that the said pretended order and judgment, whereby your petitioner was committed to the custody of the said marshal and whereby he is held in custody of the said marshal and imprisoned and restrained of his liberty, were and are wholly without authority of law and void.

4 Said order was issued in a suit whereof the said circuit court had no jurisdiction, because the complainant and one of the defendants were at the time of the filing of the said bill of complaint and ever since have been citizens of the same State, to wit, the State of Michigan, and which did not arise under the constitution or laws of the United States.

Said circuit court had no jurisdiction of the person of your petitioner, because he was not a party to the said suit, nor was he served with any process of subpœna notifying him of the same, nor did he have notice of the application made by the complainant for the mandatory injunction, nor was he served by the officers of the court with the said order of injunction, nor did he have any notice whatever of the issuing of the said order of injunction by the circuit court, nor of the contents of said order, before the doing of the acts alleged to have been in contempt of said order.

Said circuit court was also without jurisdiction to make the order aforesaid, because it was beyond the jurisdiction of a court of equity to compel the performance of a personal contract for service, and to interfere by mandatory injunction with the contract by which the Lake Shore & Michigan Southern Railway Company hired your petitioner as its servant.

Wherefore your petitioner prays that a writ of *habeas corpus* may be issued out of and under the seal of this honorable court, to be directed to the said marshal, commanding him to have the body of your petitioner, together with return of the date and cause of his detention, before this honorable court on a day to be designated therein; that he may have such other or further full and adequate relief in the premises as this court may deem appropriate, and that he may be discharged from said custody and imprisonment; and your petitioner will ever pray.

JAMES LENNON.

G. M. BARBER,
J. H. SOUTHARD, AND
FRANK H. HURD,
Counsel for Petitioner.

5 STATE OF OHIO, } ss:
Lucas County, }

James Lennon, being duly sworn, deposes and says that he has heard and read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true.

JAMES LENNON.

Sworn to before me and subscribed in my presence this 20th day of April, A. D. 1893.

[Seal U. S. Circuit C't.]

FORD BELFORD,
Deputy Clerk.

6 "EXHIBIT A."

To the judges of the United States circuit court for the northern district of Ohio, western division:

The Toledo, Ann Arbor & North Michigan Railway Company, a corporation of the State of Michigan duly incorporated and organized under the laws of the said State and a citizen of said State, brings this its bill against The Pennsylvania Company, a corporation of the State of Pennsylvania duly incorporated under the laws of said State and a citizen of Pennsylvania, and The Wheeling & Lake Erie Railway Company, a corporation duly organized under the laws of the State of Ohio and a citizen of said State of Ohio; Albert G. Blair, Jacob S. Morris, The Lake Shore & Michigan Southern Railway Company, The Michigan Central Railroad Company, The Cincinnati, Hamilton & Dayton Railroad Company, The Columbus, Hocking Valley & Toledo Railway Company, The Toledo & Ohio

Central Railway Company, The Cincinnati, Jackson & Mackinaw Railway Company, all of said six last-named defendants being corporations created and organized under the laws of the State of Ohio and citizens of said State of Ohio.

Thereupon your orator complains and says that it is now the owner of and operates a line of railroad extending from the city of Toledo, in the county of Lucas and State of Ohio, northerly and northwesterly through the said State of Michigan to a terminus at or near the village of Frankfort, in Benzie county and State of Michigan; that said line of railroad is about three hundred miles long; that your orator also owns and operates a line of steam ferry-boats for the transportation of cars and trains from said village of Frankfort across Lake Michigan to the town of Kewaunee, in the State of Wisconsin, and that it is a common carrier of freight
7 and passengers under the statutes of the United States of America and the States of Ohio and Michigan aforesaid.

Your orator further says that a large part of its business consists of the transportation of cars of freight from points in the State of Michigan and other States west of Michigan into the State of Ohio, and also the transportation of cars and freight consigned from the States of Minnesota, Wisconsin, and Michigan to points in the State of Ohio and other States east thereof, and as such common carrier as aforesaid it is engaged in a large amount of interstate commerce and traffic, which is regulated and controlled by the provisions of the acts of Congress in such case made and provided.

Your orator further says that the said defendants The Wheeling & Lake Erie Railway Company and The Pennsylvania Company are likewise common carriers of freight and passengers, and as such the defendant The Wheeling & Lake Erie Railway Company owns and operates a line of railroad extending from the city of Toledo aforesaid southeasterly through the State of Ohio to the city of Wheeling, in the State of West Virginia, and controls and operates a line of railroad in Lucas county, Ohio, known as the Belt railway, connecting your orator's road with the roads of the other defendant companies, all of whom own and operate lines of railroad extending easterly and southerly from said city of Toledo respectively, and that the said defendants The Pennsylvania Company owns and operates a line of railroad extending from said city of Toledo southeasterly through the State of Ohio to the city of Pittsburgh, in the State of Pennsylvania.

All said defendant companies' lines of railroad connect with the line of your orator at a common grade in the county of Lucas and State of Ohio convenient for the interchange of cars of freight.
8 That a very large and important part of the business of your orator consists in the interchange of said cars of freight between your orator and the said defendant companies.

That substantially all the business transacted as aforesaid between your orator and said defendant companies consists of the interchange of cars containing freight consigned from points in one State to points in another State, and said business is therefore subject to all and singular the provisions of the act of Congress of February

4th, 1888, regulating commerce between the States, and the amendments thereto.

Your orator further says that all of said business of interchange of cars of freight as aforesaid between your orator and defendant companies is transacted within said county of Lucas and State of Ohio, within the jurisdiction of this court.

Your orator further says that by the provisions of the act of Congress aforesaid it is the duty of said defendant companies, according to their respective powers, to afford all reasonable, proper, and equal facilities for the interchange of traffic with your orator, and to receive, forward, and deliver cars of freight in the ordinary transaction of the business aforesaid from and to your orator without any discrimination.

And your orator further says that it is the duty of the defendant companies under the statutes of the State of Ohio to receeve from your orator the cars of freight delivered to them in the ordinary transaction of the business aforesaid without any unnecessary delay, and to transport the same to their destination over their respective roads, and in like manner to deliver to your orator all cars of freight billed over your orator's road to be by your orator transported to their destination.

9 And your orator further says that said defendant companies and their officials, agents, and employés have since the 11th day of March, 1893, given out and threatened that they will refuse to receive from your orator cars offered or to be offered by your orator, and that they will not deliver to your orator cars billed over your orator's road for transportation by your orator to their destination for the reason, as your orator is informed and believes, that because your orator has employed as locomotive engineers in its service men who are not members of the Brotherhood of Locomotive Engineers, which your orator is informed is an irresponsible voluntary association of locomotive engineers, the locomotive engineers in the employ of defendant companies have refused to handle cars to be interchanged with your orator's railroad; but your orator says that it is informed and believes that the defendants continue to afford to other railroad companies the full and free facilities for interchange of traffic as aforesaid while refusing to transact such business with your orator, thereby discriminating illegally against your orator.

Your orator alleges the fact to be that no legal or reasonable ground exists why said defendant companies should refuse to transact the business of interchanging cars of freight as aforesaid, and that no excuse is alleged, so far as your orator is advised, for such refusal other than the one hereinbefore set forth.

Your orator further says that if said defendant companies shall persist in their refusal to handle said interchange business, as aforesaid, a very large and important part of your orator's business will come to a complete standstill, the transaction of said interstate commerce will be paralyzed, and the loss and injury to your orator and to the public will be irreparable and continuing.

10 The defendant Albert G. Blair is the general manager of said defendant The Wheeling & Lake Erie Railway Company, and as such has general charge and control of all its business operations, and the said defendant Jacob S. Morris is the superintendent of the defendant The Pennsylvania Company, and as such has general charge and control of the business operations of said company in said Lucas county, Ohio.

Your orator further says that unless the said defendants are restrained by the order of this court from refusing to perform their public duty as aforesaid your orator will be unable to perform its public duty in the transportation of the cars between the State of Ohio and State of Michigan; that the interest of the public will suffer by reason of the accumulation of cars on the line of your orator's road and connecting roads and inability of your orator to carry or deliver them; that from the nature of the case the damages suffered by your orator would be difficult and impossible to estimate, and that your orator has no adequate remedy at law in the premises.

Your orator further says that the matter in dispute herein exceeds, exclusive of interest and costs, the sum of $2,000.00, and that this suit arises under the Constitution and laws of the United States.

Inasmuch as your orator can have no adequate relief except in this court, and to the end, therefore, that said defendants may, if they can, show cause why your orator should not have the relief hereby prayed for and make a full disclosure and discovery of all the matters aforesaid according to the best of their knowledge, information, and belief, — full, true, direct, and perfect answer to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby waived—

11 Your orator prays that your honors may grant a writ of injunction, issued out of and under the seal of this honorable court, perpetually enjoining and restraining the said defendant companies, their officers, agents, servants, and employés, from refusing to offer to your orator all reasonable and proper and equal facilities to the interchange of traffic with your orator and from refusing to receive from your orator for transportation over their respective lines of railroad any and all cars of freight which may be tendered to them by your orator and from refusing to deliver to your orator all cars of freight which may be billed over your orator's line of railroad from said defendant companies in like manner as heretofore and restraining said individuals defendants and each of them, while remaining in the service and employment of said respective companies, from refusing to perform the usual services required in their respective capacities for the interchange of cars and freight between your orator and said defendant in the same manner in which the same has been heretofore carried on, and for such other relief as to the court shall seem equitable and proper in the premises.

Your orator prays that a provisional or preliminary restraining order be issued to the same purpose and effect as herein prayed for

against said respective defendants, to remain in full force until the further order of the court herein or until this suit shall be finally disposed of.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna issuing out of and under the seal of this court, directed to said The Pennsylvania Company, The Wheeling & Lake Erie Railway Company, Albert G. Blair and Jacob S. Morris,
12 The Lake Shore & Michigan Southern Railway Company, The Michigan Central Railroad Company, The Cincinnati, Hamilton & Dayton Railroad Company, The Toledo and Ohio Central Railway Company, The Columbus, Hocking Valley and Toledo Railway Company, The Cincinnati, Jackson and Mackinaw Railway Company, commanding them on a day certain to appear and answer unto this bill of complaint and to abide by and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity.

ALEXANDER L. SMITH,
Sol'r for Complainant.

13 "EXHIBIT B."

The Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY COMPANY, Complainant,
vs.
THE PENNSYLVANIA COMPANY *et al.*, Defendants.
} Order.

On the filing of the bill of complaint and the affidavit herein and it appearing to the court that serious, im-ediate, and irremediable damage will ensue unless an interlocutory injunction be allowed, as prayed for in the bill, it is, on application of said complainant, cordered that the said defendants, Albert G. Blair, Jacob S. Morris, The Pennsylvania Company, The Wheeling & Lake Erie Railway Company, The Lake Shore and Michigan Southern Railway Company, The Michigan Central Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Columbus, Hocking Valley and Toledo Railway Company, The Toledo and Ohio Central Railway Company, The Cincinnati, Jackson and Mackinaw Railway Company, and each of them and their officers, agents, servants, and employés be, and they are hereby, enjoined and restrained from refusing to offer and extend to said The Toledo, Ann Arbor and North Michigan Railway Company the said equal facilities for interchange of traffic on interstate business between said railway companies as are enjoyed by other railway companies, and from refusing to receive from said The Toledo, Ann Arbor and North Michigan Railway Company cars billed from points in one State to points in another State which may be offered to said defendant

companies by the complainant, and from refusing to deliver
14 in like manner to said complainant cars which may be billed over complainant's line from points in one State to points in other States.

Ordered that a writ of injunction be issued out of and under the seal of this court, as prayed for in the bill of complaint, to remain in full force until the further order of court herein.

Done at chambers, in the city of Cleveland, in said district, on this 11th day of March, A. D. 1893.

AUGUSTUS J. RICKS,
U. S. Dist. Judge, N. D. O.

15 "EXHIBIT C."

United States Circuit Court, Northern District of Ohio, Western Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY COMPANY, Complainant,
vs.
THE PENNSYLVANIA COMPANY *et al.*, Defendants.

No. 1139. Application for Order of Attachment.

Now comes The Lake Shore & Michigan Southern Railway Company and represents to this honorable court that it is one of the defendants in said above cause, and is a duly incorporated railway company, and as such is operating a line or lines of railway in the States of New York, Pennsylvania, Ohio, Michigan, Indiana, and Illinois, and is engaged as a common carrier in said several States in the business of receiving and hauling and delivering cars of its own and connecting carriers having freight therein from one State to another.

That in the performance of such service it has in its employ a large number of men.

That in the usual course of business with the said complainant in the above cause there were, upon the 17th day of March, 1893, between the hours of 4 and 11 p. m., upon the tracks and in the yards of said The Lake Shore & Michigan Southern Railway Company, to be delivered to The Toledo, Ann Arbor & North Michigan Railway Company, a number of cars laden with freight, shipped from within the State of Ohio and consigned to places without said State, to be by said The Toledo, Ann Arbor & North Mich. R'y Co.
16 hauled over its lines within and beyond the State of Ohio, and to be delivered to other connecting carriers therein.

That upon receipt of said cars and freight by the said Lake Shore & Michigan Southern Railway Company upon the 17th day of March, 1893, certain of said Lake Shore & Michigan Southern Railway Company's employés, to wit, N. O. James, Lee Thompson, and —— Kessler, firemen, and James Lennon, L. Clark, James Case, William Rutger, and John Conley, locomotive engineers in charge of its locomotives and engines, having theretofore had full notice of the order heretofore made and of the law applicable to the case and

whilst in the service of said company, refused to obey the order and mandate of this court in said cause and deserted their locomotives and engines in the yard of said company for the reason that Ann Arbor cars of freight were in the trains of said company, said employés, in fact, refusing to haul said cars and perform their service for the reason that there were Ann Arbor cars in said train.

That the action of said engineers in refusing to perform said service and haul said cars was following out a plan, arrangement, or agreement theretofore made by said engineers in an organization of locomotive engineers of which they were members and in compliance with orders and instructions from the superior officers of said association or organization.

That therein the said N. O. James, Lee Thompson, —— Kessler, firemen, and James Lennon, James Case, L. Clark, William Rutger, and John Conley, locomotive engineers, employés of said The Lake Shore & Michigan Southern R'y Co., disobeyed and violated the order of said court as aforesaid, in consequence whereof the said The Lake Shore & Michigan Southern Railway Co. has not been able to fully perform and obey the orders of said court as therein made.

17 Wherefore said Lake Shore asks that an attachment may issue forthwith against said N. O. James, Lee Thompson, and —— Kessler, firemen, and James Lennon, L. Clark, James Case, William Rutger, and John Conley as being in contempt of the restraining order of this court, and for such other and further orders in the premises as is just and proper.

THE LAKE SHORE & MICHIGAN SOUTHERN R'Y CO.,
By E. D. POTTER, JR., *Its Solicitor.*

UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, } ss:

L. E. Johnson, being duly sworn according to law, says that he is one of the managing officers, to wit, division superintendent, of said The Lake Shore & Michigan Southern Railway Company for its Michigan division, so called; that he is in charge of the company's business at Toledo, in said State of Ohio; that the facts set forth in the foregoing complaint and application are true in substance and in fact.

L. E. JOHNSON.

Sworn to before me and signed in my presence this 18th day of March, 1893.

[SEAL.]

JAMES W. LYONS,
Notary Public, Lucas County, Ohio.

18 "EXHIBIT D."

United States Circuit Court, Northern District of Ohio, Western Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY COMPANY, Complainant,
vs.
THE PENNSYLVANIA COMPANY *et al.*, Defendants. } No. 1139. Order.

On motion of said The Lake Shore & Michigan Southern Railway Company, defendant in said above action, by E. D. Potter, Jr., its attorney, and it appearing to the court that the said N. O. James, Lee Thompson, and —— Kessler, firemen, and James Lennin, L. Clark, James Case, William Rutger, and John Conley, locomotive engineers, employés of the said The Lake Shore & Michigan Southern Railway Company, have refused to obey the former order of this court herein, it is therefore ordered that the said above-named individuals be cited to appear forthwith and show cause why they should not be attached for contempt in disobeying the said order of said court herein.

19 THE UNITED STATES OF AMERICA, *Northern District of Ohio, Western Division,* } *ss:*

The President of the United States of America to N. O. James, Lee Thompson, Edward Kessler, James Lennon, L. Clark, James Case, William Rutger, and John Conley, Greeting:

You and each of you are hereby cited and admonished to be and appear before the honorable the United States circuit court within and for the northern district of Ohio, at the city of Toledo, in said district, forthwith, to show cause, if any exist, why you should not be punished for contempt of said court as by the order of said court provided, a copy of which said order is hereto attached.

Hereof fail not under penalty of what may befall you therein.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of March, A. D. 1893, and in the 117th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk.*

NORTHERN DISTRICT OF OHIO, *ss:*

On the 18th day of March, 1893, at Toledo, Ohio, I made due service of this writ upon the within-named L. Clark at 4.15 p. m., James Lennon at 4.25 p. m., William Rutger at 4.35 p. m., James Case at 5.30 p. m., Edward Kessler at 6.00 p. m., Lee Thompson at 8.00 p. m., and on the 19th day of March, 1893, on John Conley at 9.30 a. m., N. O. James at 5.30 p. m., by delivering to each a true and certified copy thereof.

W. C. HASKELL,
U. S. Marshal,
By —— ——, *Deputy.*

20 THE UNITED STATES OF AMERICA, *Northern District of Ohio, Western Division,* } ss:

At a stated term of the circuit court of the United States within and for the western division of the northern district of Ohio, begun and held at the city of Toledo, in said district, on the first Tuesday in December, being the 6th day of said month, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States of America the one hundred and seventeenth, to wit, on Saturday, the 18th day of March, A. D. 1893—present, the Honorable Augustus J. Ricks, district judge—among the proceedings then and there had were the following, to wit:

SATURDAY, *March* 18, 1893.

United States Circuit Court, Northern District of Ohio, Western Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY COMPANY *vs.* THE PENNSYLVANIA COMPANY *et al.* } No. 1139. Order.

On motion of said The Lake Shore & Michigan Southern Railway Company, defendant in said above action, by E. D. Potter, Jr., its attorney, and it appearing to the court that said N. O. James, Lee Thompson, and —— Kessler, firemen, and James Lennon, L. Clark, James Case, William Rutger, and John Conley, locomotive engineers, employés of the said The Lake Shore & Michigan Southern Railway Company, have refused to obey the former order of this court herein, it is therefore ordered that the said above-named individuals be cited to appear forthwith and show cause why they should not be attached for contempt in disobeying the order of said court herein.

21 The Circuit Court of the United States, Northern District of Ohio, Western Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY COMPANY, Plaintiff, *vs.* THE PENNSYLVANIA COMPANY *et al.*, Defendant-.

STATE OF OHIO, *Lucas County,* } ss:

James Lennon, being first duly sworn, makes oath and says that he is a locomotive engineer and for many years prior to the 18th day of March, 1893, he was continuously in the employ of the Lake Shore & Michigan Southern Railroad Company.

That he has no knowledge of the facts stated in the application of said Lake Shore & Michigan Southern Railroad Company for an order to show cause so far as the facts therein stated relate to there

being cars laden with freight upon the yard of said company consigned to places without the State to be by said Toledo, Ann Arbor & North Michigan Railroad Company hauled over its lines to other places, as in said application stated.

Affiant denies that during the time he was in the service of said company he had any notice or knowledge of the contents of the order and mandate made by the Hon. Judge Ricks in the above cause.

He denies that he refused to obey the order and mandate of the court in said cause, and he denies that he deserted his locomotive or engine in the yard of said company or that he deserted said locomotive at all.

Affiant says that he had no knowledge of any plan or
22 agreement of engine-rs of an organization of engine-rs known as the "Brotherhood of Locomotive Engineers."

Affiant says that he has no recollection of being requested or directed to receive from or deliver to said Toledo, Ann Arbor & North Michigan Railroad Company any cars of freight upon the 17th day of March, 1893.

That on the morning of the 18th day of March, 1893, affiant left the city of Monroe, Michigan, with his engine and train and came south as far as Monroe at about 9.15 standard time; that upon arriving at Alexis what is known as the order board was up, indicating that the train was to stop at that place. After stopping, the brakeman of affiant's train went over to the telegraph office for orders. Shortly after that the conductor came to affiant and showed affiant an order to get one empty car from the Ann Arbor road. Affiant then told said conductor that he had determined to quit the service of the company and then and there did quit said service. Affiant said to said conductor that if it was desired that he should take the engine and train to Toledo or elsewhere he would do so or he would leave the engine and train upon the side track where it then was.

That after some delay affiant concluded that, as a matter of accommodation merely to said company, he would take said car from the Ann Arbor track and haul the same to West Toledo as directed by said order.

Affiant thereupon took said car from the tracks of the Toledo, Ann Arbor & North Michigan railroad and hauled the same to West Toledo. Affiant then, upon request, brought said train and engine to Air Line Junction and placed both engine and train in the proper places. Affiant then made his report to said company.

Affiant says that since he first announced his intention to quit
the service of said company he has not considered himself
23 in the employ of said company, and that what he did in the matter of bringing said car to West Toledo and said locomotive and train to Air Line Junction was done gratis by him and purely as a matter of accommodation to said Lake Shore & Michigan Southern Company.

Affiant says he did not intend any disrespect or contempt of the court heretofore made in the above cause, but believed that in what

he did he was exercising only the right which the law gave him and which the company itself would not seriously question.

JAMES LENNON.

Sworn to before me and subscribed in my presence this 20th day of March, 1893.

E. W. NEWTON,
[SEAL.] *Notary Public, Lucas County, Ohio.*

24 "EXHIBIT E."

In the Circuit Court of the United States, Northern District of Ohio, Western Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY COMPANY, Complainant,
vs.
THE PENNSYLVANIA COMPANY *et al.*, Defendants.
} Journal Entry in Matter of Contempt.

This day came on to be heard the motion of The Lake Shore & Michigan Southern Railway Company, one of the defendants herein, against Nathan O. James, Leon Thompson, Edward F. Kessler, James Lennon, Leonard Clark, James B. Case, William Rutger, and John Conley, the servants and employés of said Lake Shore & Michigan Southern Railway Company, for them to show cause why they and each of them should not be adjudged guilty of contempt for disobeying the order of injunction heretofore issued against the defendants herein, their agents, servants, and employés, and the court, hearing the testimony produced by said Lake Shore & Michigan Southern Railway Company and the said defendants and the arguments of their respective counsel, do find that Nathan O. James, Leon Thompson, Edward F. Kessler, Leonard Clark, James B. Case, William Rutker, and John Conley are not guilty of contempt and are hereby discharged.

And the court do further find that James Lennon is guilty of contempt in disobeying the order of injunction aforesaid, and do order and adjudge that the said James Lennon pay a fine of fifty dollars ($50) and the costs of the proceedings against him, taxed at $—, and stand committed until the said fine and costs shall be paid or he be otherwise discharged in due course of law.

25 The Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY CO., Complainant, *vs.* THE PENNSYLVANIA COMPANY *et al.*, Defendants. } Hearing on Application for Attachment for Contempt.

Appearances.

For applicant: G. Greene, Esq., E. D. Potter, Jr., Esq.
For defendants: F. H. Hurd, Esq., J. H. Southard, Esq.

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26 The COURT: Gentlemen, are you ready to proceed?

Mr. POTTER: Yes, sir. If your honor please, the order issued by your honor upon the application of The Lake Shore & Michigan Southern Railway Co., one of the defendants in this proceeding, was for a citation of certain of the company's employés named in the application to show cause why they should not be attached for contempt as in disobedience of your honor's orders. The citation was served upon the parties, as your honor knows, and return has been

made by the U. S. marshall, and the parties, as I understand, are here in court ready to proceed; and this occurs to us as to whether your honor will take up each of these cases singly or whether the testimony shall be offered—that is, substantially one trial of all or singly. We are content ourselves to submit the entire matter under one hearing.

The COURT: What is your wish in the matter, Mr. Hurd and Mr. Southard. Have you any choice?

Mr. SOUTHARD: I think, your honor, so far as the testimony is concerned, that it may as well be submitted together.

The COURT: Each case, of course, will stand upon its own particular facts and merits, but if there is no objection they may all be heard together.

Mr. SOUTHARD: I simply say this: I don't know that there is any entry made or know that there is any settled practice or whether they are to be heard on affidavit or whether upon testimony adduced.

The COURT: Well, they may be heard both on affidavit and testimony. If you have prepared——

Mr. SOUTHARD: We have so far filed an affidavit for each of the men who are cited to appear.

Mr. POTTER: Affidavits have been filed which are in effect a denial of some of the averments of the application, to wit, notice of the order of injunction, and some, perhaps, single averment. We suppose that the proper course to pursue, the better course to pursue, and more satisfactory to your honor, would be to submit the oral proof of the circumstances surrounding the acts of these parties.

The COURT: Well, there is no objection to it. Oral proofs will be heard in addition to the affidavits.

27 Mr. POTTER: It may be that I don't know to what extent the counsel upon the other side or your honor will require proof under the issue as made by the affidavits filed by friends upon the other side. We take it for granted that the only issue is as to the notice upon these parties and as to their declining to haul what is called Ann Arbor freight. There are a great many facts in detail which we can make proof of if they are disputed, to wit, the fact of the employment of these parties as engineers and in the service of the company as engineers and the facts that lead up to that, and the further fact as to these cars which they refused to receive or haul being interstate traffic. I don't know whether the gentlemen upon the other side will deny that. We are prepared to make proof of that if it is desired, but if we go into a detailed account of all these matters it will take some little time. I supposed the real issue was the issue which they have made by their affidavits, to wit, as to the right of these parties to resign from the service of the company at the time they did and as to the fact of notice of the order which your honor had entered in the case.

Mr. HURD: We suppose that they should make out their case.

Mr. POTTER: It is perhaps hardly necessary, if your honor please, to read it, but I will call your honor's attention and offer—although I suppose your honor will take judicial notice of it—the order en-

tered by your honor in this case. (Counsel reads order, which is hereunto attached and made a part hereof, marked Exhibit No. 1.)

This order was signed, as your honor will remember, upon the 11th day of March, 1893. The service was made the following day, upon the 12th of March, upon the Lake Shore & Michigan Southern Railway Co.; the records show that.

Mr. HURD: I have here the book of rules of the company. Do you desire me to make formal proof of their identity?

Mr. HURD: No, sir.

Mr. POTTER: I offer in evidence and read rules 618, 740, 760, 768, 769. The first rule that I read is this: Rules of the company governing and directing its employés in the performance of their service, which is a part of the contract of service.

Rule 618. No person, of whatever rank or position, will be permitted to absent himself from duty or to change off with another for a trip or part of a trip or day without first obtaining permission from his superior.

740. They must obey the orders of station masters and yard masters as to switching and making up trains and those of conductors as to starting, stopping, and general management of trains unless they endanger the safety of the train or require violation of rules.

760. They are not permitted to change engines while on the road, except in case of accident or sudden illness, when such charge must be made through the proper officer.

768. They must not leave their engines while on duty except in case of necessity, and then the fireman or some competent person must be left in charge.

769. They will take into consideration that the lives of passengers and trainmen, as well as the property of the company, are entrusted to their care, and it is fully expected and required that they will not only attend to and obey all signals and instructions, but also that they will on all occasions be vigilant and cautious themselves, not trusting alone to signals or rules for safety.

28 I offer in evidence and read, if your honor please, from the general orders in force at that time of the company with reference to freight runs.

Mr. HURD: Do you offer the whole order?

Mr. POTTER: I offer the whole order, and I will read portions and submit it to you.

Mr. SOUTHARD: Order No. 6?

Mr. POTTER: Yes, sir; it is order No. 6. You have a copy of it.

Mr. SOUTHARD: Yes, sir.

Mr. POTTER (reads): "In freight service 100 miles will be allowed for all runs of that distance or less. Where runs are over 100 miles the actual length of the run will be paid for. On the Buffalo, Erie, Oil City, Kalamazoo, and Western divisions one round trip will entitle the engineman making it to 200 miles' distance allowance. On all other branch divisions the computation of mileage for round trips to be actual distance run, but no round trip to be rated at less than 100 miles. For fractional miles one-half or excess shall be

counted as one mile; less than one-half, no compensation shall be allowed. All runs where the miles allowed exceed the actual miles no compensation shall be allowed for extra mileage continuous on the trip unless the aggregate miles for the trip exceed the miles allowed. On passenger runs overtime is to begin after 12 hours in the service. Engineers' and firemen's time to be counted from leaving time at yard as notified until engine is given up on track at terminal designated for such purpose, providing that there is no unusual delay beyond the time required for transfer of engines from house to yard and from yard to track."

I will ask Mr. Stevens to take the stand.

GEORGE W. STEVENS, being first duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Mr. SOUTHARD: There are certain charges made in this application. Is it designed to confine this to the statements or charges made in the application?

Mr. POTTER: It is necessary for us, I suppose. What we proposed to do was to show the transaction and the business of these people—employment—when their trips began, when their service begun—as affecting the action which they claim that they took after they entered upon the performance of their service.

The COURT: In order to ascertain whether the acts charged were acts in violation of the order of the court.

29 Mr. POTTER: That is it precisely, if your honor please—while they were in the employment of the company. The position we take is this: that after they had entered upon the performance of their trip—that is, took their engines, entered upon the performance of the service—they *they* could not terminate that service—that is, the day's service—after they had entered upon it until it was completed. They might withdraw from the service of the company, but if there was a mandatory order to perform a particular service the servant could not stop midway in the service when his orders were to perform it in its entirety.

Q. Give your name in full.

A. George W. Stevens.

Q. What is your position?

A. I have charge of the locomotives on the Lake Shore road under the title of superintendent of motive power.

Q. How long have you been in the service of the Lake Shore?

A. Since 1866.

Q. How long have you occupied your present position?

A. This is my tenth year.

Q. In the performance of that service what are your duties? What do you do generally—not in detail, but what have you, what do you do? What is your——

A. I have a general supervision of locomotives.

Q. The motive power?

A. Yes, sir; also the men employed in the locomotive department.

Q. Are you acquainted with and familiar with the rule and custom as to the performance of the particular service by the engineers in the employ of the Lake Shore road—say, for instance, a freight engineer entering upon the performance of his service?

A. Yes, sir.

Q. I wish you would state to the court what that is. Illustrate or state to the court what the entry upon the service is or what the service is and when it ends.

A. Well, the rule provides that the compensation shall be on the basis of $3.70 for each 100 miles run or less. The com-encement of the—or, rather, the time is to commence as notified in the yard.

Q. Notified in the yard? What do you mean by notified in the yard—called into the yard or entering upon the engine?

A. The time for which they are called to leave in the yard.

Q. That is, suppose they are called to leave at 4.20 or 5.40?

A. Their time would commence at 4.20.

Q. Now, go on and explain to the court, if you will, the order of the performance of those duties, when they begin and when they end—what is done.

A. The end of the trip would be or run would be when they gave up their engines in the yard or *tarck* designated for that purpose.

Q. When would it begin?

A. It would begin the time for which they was called.

Q. And in the performance of that service—that is, after being called—what is the usual custom, what is the rule, of the engineers in entering upon the performance of that service? How is it done? Explain, if you will

A. I don't know as I exactly understand you, Mr. Potter.

30 Q. I mean by that they are called at a particular time to perform this service; to go out upon this run in obedience to that call, what do they do?

A. Why, the usual practice is to go to the engine-house and prepare their engine for the trip; make an effort to leave the yard, to get the train on time and leave on time the place for which they are called.

Q. What is the rule or custom of the company after they have entered upon the performance of that trip, as to being delayed by order of the company or their own act?

A. You mean the custom as to compensation?

Q. Yes, sir.

A. They would be paid for such time as they were delayed; the fact that the time commences from when leaving time in the yard is called.

Q. Suppose after they are called for some reason or other the train *uou* upon the road is delayed, does the time run on the same or compensation run to their credit?

A. Yes, sir.

Q. And in twelve hours suppose they have been delayed by the company—they haven't made any run at all—are they credited with the day's services?

A. They are paid for one day whether they do 100 miles or less.

Q. Suppose they are delayed over that time, is there any rule or custom as to that?

A. Yes; they receive overtime after a given number of hours, and if the run exceeds 100 miles, why, they are paid *pro rata*.

Q. How long has that custom or rule been in force, to your knowledge, or practice here?

A. Why, something like 1886, I remember it.

Q. Are you acquainted with the parties named in this application, Mr. Stevens?

A. Yes, sir.

Mr. POTTER: Is there any dispute but what the parties named in this application were in the service of the company?

Mr. SOUTHARD: I think not, as to those named in the affidavit.

Mr. TOLERTON: They were all in the service he says.

Mr. POTTER: Gentlemen, do you dispute as to the fact that the parties named in this application had copies of our rules and regulations; do you dispute that?

Mr. SOUTHARD: You mean the rules and regulations of the company?

Mr. POTTER: Yes.

Mr. SOUTHARD: We say nothing; we presume they all had them.

31 Mr. POTTER: Then there will be no occasion of making proof, and that we will drop?

The COURT: That is conceded.

Mr. POTTER: And that they were operating under the engineering department of these rules—these orders—that I have read?

The COURT: They concede that.

Mr. POTTER: I don't think of anything else to ask Mr. Stevens, gentlemen.

Cross-examination by Mr. SOUTHARD:

Q. Do any of your engineers running upon the road work by the day?

A. The road time is all computed in miles. He is paid by the day or so much per mile; so much per mile on the basis of 100 miles.

Q. On the basis of 100 miles for what?

A. That would be 100 miles per day.

Q. When did I understand you to say that the time commenced?

A. In the yard as notified, the time for which they are called.

Q. The time for which they are called?

A. Yes, sir.

Q. Supposing a man is not called for any particular time, when does his day commence?

A. I never knew a case of that kind.

Q. Whether it takes six hours or twelve hours to make the hundred miles, it is a day, is it?

A. I have already stated after twelve hours he gets overtime.

Q. And he is paid his regular mileage, I suppose, after the 12 hours have expired?

A. Yes, sir.

32 JAMES O. BRADEEN, first being duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. What is your name in full?

A. J. O. Bradeen.

Q. What is your service?

A. Foreman of round-houses.

Q. Whereabouts?

A. At Toledo and Air Line Junction.

Q. And for what company?

A. Lake Shore & Michigan Southern.

Q. How long have you been in that particular service?

A. Three years and a half.

Q. How long have you been in the service of the company?

A. 18 years.

Q. In your department of service what are your duties as foreman of the round-house here in Toledo?

A. I have charge of the men stationed here in the locomotive department—charge of the shops and the engines while here.

Q. Does that include passenger engines and freight engines?

A. Yes, sir.

Q. You have, you say, the supervision and charge of the engines. Explain a little more fully what you mean by that.

A. Well, I do the repairs—see that the repair- are done on the engines; have the men called for their runs.

Q. When you speak of the men called for their runs you mean what? You mean the engineers and firemen?

A. Engineers and firemen; yes, sir.

Q. To perform particular service? Run?

A. Yes, sir; whatever service it is.

Q. What is the custom—what is the rule in regard to that?

A. Well, we receive our orders for the runs from the yard master, and then we furnish the engines.

Q. When you receive the orders from the yard master to provide for the runs what is the next thing you do?

A. Send out callers for the men.

Q. You send callers for the men, notifying them what?

A. That they are wanted for that.

Q. Different service for night and day?

A. Yes, sir.

Q. That is, you send for the men and get them to their post of duty in time?

A. Yes, sir.

Q. And what is the custom and habit or rule after the men have reported to the round-house? Having been called and reported to

the round-house, what do they do in entering upon the performance of their service?

A. Their duty is to examine their engines to see that they have a full complement of tools and draw their supplies—oil, waste, and things like that—and to get out in the yard the time they are called for.

Q. You mean by that, get out on the engine to move out in the yard?

A. Yes, sir.

Q. When is it that they enter upon the performance of the particular service or run?

A. They get their—their pay commences from the time they are called for in the yard. They enter upon the service when they come to the house and report for duty, to a certain extent.

Q. And that has been the custom and rule for how long here?

A. Ever since I have had anything to do with the runs.

33 Q. You were in charge or at your post at Air Line Junction on the 17th and 18th of March last?

A. Yes, sir.

Q. I wish you would go on and state in your own way what occurred, so far as your knowledge goes, with reference to the calling and appearance of the parties whose names I will give you or either of them: James Lennon, L. Clark, James Caes, William Rutker, and John Conely.

A. Well, an order was received for a Detroit extra.

Q. Just give the date, if you will.

A. On the 17th of March.

Q. And about what time of the day?

A. About 3 o'clock. It may be a few minutes before 3, but it was nearly 3 o'clock.

Q. Three o'clock in the afternoon?

A. Yes, sir.

Q. Of the 17th of March?

A. Of the 17th of March. Engine 420 stood for this run, and Engineer Clark and Fireman Thompson were called to take the run out.

Q. You speak of Detroit run. Do you mean by that a trip from Toledo to Detroit?

A. From Air Line Junction to Detroit.

Q. A freight run?

A. Yes, sir; an extra, as we call it.

The COURT:

Q. Engineer Clark and fireman who?

A. Thompson.

Mr. POTTER:

Q. Fireman Thompson and Engineer Clark?

A. Yes, sir.

Q. Go on and tell what transpired now.

A. And either at — about 4.15 I saw Engineer Clark come into

the office, and I knew that he was around for his run. A call had been sent out for him to do it.

Q. Speak a little louder.

A. I saw Engineer Clark come into the office, and I knew that he had responded to the call for the run.

Q. What run was that?

A. The Detroit run. That was the Detroit extra. I was sitting at my desk and had just received the mail from Toledo, and I opened one of the letters.

Q. Speak a little louder, please, so that we all hear you.

A. And found that it contained an order—bulletin notice, order, and a mandatory order from Judge Ricks, and I opened it, and——

Mr. HURD:

Q. What was it you opened, I don't hear?

A. Opened the envelope with a bulletin notice in it and the mandatory order from Judge Ricks.

Mr. POTTER:

Q. Will you identify a copy of that order if show- you?

A. I will, sir.

Q. Look at that and state to the court whether that is a copy of the order that you received at that time (shows witness paper).

A. That is the order that I received—copy of the order that I received.

Q. What time did you say that you received it?

A. About 4 or 5 in the afternoon.

Q. Where was Mr. Clark at that time?

A. There is a railing that comes across the front part of the office, and he stood on the outside of the railing and I on the inside.

34 Q. You may state what transpired, if anything.

A. And stated that this would interest him, and I read the notice—Mr. Canniff's—and also the mandatory order of Judge Ricks, and walked up to the railing while I done it, so that he should look over my shoulder at the same time.

Q. How close were you to him when you read it to him—how were you standing with reference to him when you read it?

A. I was standing with my arm on the railing like this, and he was standing on the other side.

Q. Was he standing where he could see it, read it, if he desired to read it?

A. Yes, sir.

Q. You say you called his attention to the order?

A. I read it to him.

Q. What, if anything, transpired after that?

A. Well, at 4.35 I took the train and went to Toledo.

Q. Did you have any conversation with him at that time?

A. With Clark?

Q. Yes, sir; any further conversation?

A. No further conversation that I remember of.

Q. What did you do then with the order which you had received?

A. I had the office boy take it out and tack it on the bulletin board.

Q. You call the bulletin board—just describe what that is and what it is for and the purpose and object of it.

A. It is the daily reference for the engineers. Whatever notice or order that we get are posted on this board, and each man is supposed to go to this board before he goes out on his run to see if any new orders have been put up.

Q. I will ask you to state to the court whether it is not a part of the duty of the engine men before they go upon their runs to go to the bulletin boards to see as to what instructions or orders are in force.

A. It is a very imperative duty to do so.

Q. How soon after Mr. Clark was there was the order posted up?

A. Probably before he would have time to get out there or before he did get out there.

Q. How far from your office is the bulletin board located—whereabouts—or is it located in the engine-house?

A. In the engine-house; you go through the shop here and into the engine-house.

Q. Right convenient to the locomotives?

A. Yes, sir; right in the house where the locomotives are kept.

Q. Did you see Mr. Clark when he boarded his engine?

A. No, sir; I did not.

Q. So as to what further transpired, so far as he is concerned, you have no knowledge of your own?

A. Nothing at all.

Q. What next transpired with reference to calling other parties; and, if so, who? *A.* Go one now and state.

A. About 6.40, standard time, the caller came to my house and said that I was wanted down to the depot, and I went to the depot, and then found out that Clark had not gone out on his engine, and at 7.50 I went to Air Line Junction on train 21 and found that they had called another engineer and fireman, who had refused to go out.

35 Q. Who was this person, if you know?

A. It was Engineer Case, J. B. Case, and Fireman Kessler.

Q. Is there a record kept of these calls in your office showing who had been called?

A. Yes, sir.

Q. You found from the record that they had been called and not gone out?

A. Yes, sir.

Q. What next transpired?

A. I had another crew called to go out on the engine.

Q. What crew is that?

A. The next engineer was Engineer Rutker and Fireman James.

Q. You may go on and state what transpired with reference to them.

A. I should judge about 10 o'clock I was told that Rutker had arrived.

Q. Perhaps it wouldn't be proper for you to state what you had been told; just state what transpired between you—what you know of your own knowledge.

A. I went in the round-house and met Engineer Rutket, and I had a Detroit time-card in my hand to give him, as I thought he would be in for one, and when I met him he says, "What is the matter?" I said he was called for an extra for Detroit. He only says, "I understand that there has been several men refused to go out on this and I don't see why you called me," and I asked him to go into the office, and he come into the office and set down on the desk, and I asked him why he didn't want to go out—what objections he had—and he said that the others had quit because they wouldn't haul Ann Arbor freight, and that he didn't like to do it himself. We talked several minutes in the same strain, and I asked him if he knew of the order of Judge Ricks, and he said he hadn't seen it, and I handed him one and asked him to read it, which he did—the whole of it and the extract from the interstate law. After he read it——

Q. How long did he have it in his hands, about?

A. I should think it took him about five minutes to read it. He read it very carefully.

Q. That's about ten o'clock in the evening?

A. About that. I couldn't say exactly, but near that.

Q. After he had finished reading it, then what?

A. I asked him if he thoroughly understood it. He said that he did, but he didn't know whether he would go out or not.

Q. Didn't know whether he could or would?

A. Whether he would or not. About that time Engineer Case stepped into the doorway and Rutker says, "I will be back in a minute." I told him that the train was waiting and I would like to have him go out as soon as he could, if he was going, and he said he would be back in a minute.

Q. The Case you speak of, the Engineer Case, had been one that had been called and had not gone out?

A. Yes, sir; and very shortly he came back, I should judge a minute or two minutes, and asked for the time-card. He says, "I will take the engine out anyway," and I saw that he was
36 getting the engine on the table, and went to the yard master's office and notified them that the engine was going on, in company with Mr. Sheldon, Mr. Stanton, Mr. Horgan, and Mr. Moore, and went over to the engine.

Q. I understand you went out from the round-house and saw him get on the engine?

A. Getting on the table with the engine.

Q. Got in the engine; moved the engine out on the table?

A. Yes, sir.

Q. You went down in advance of him to the yard master's office to inform him that the engine was going to take the run?

A. Yes, sir.

Q. You got down there—a little bit louder, if you please.
A. We came over to the engine.
Q. When you got there, who was with you?
A. Mr. Stanton, Mr. Horgan, Mr. Moore, and Mr. Sheldon were the only ones with me.
Q. What transpired then?
A. We got onto the engine and he backed around on the train.
Q. What do you mean, coupled up on the train?
A. Yes, sir; backed around to the train and was coupled to the train.
Q. This was Mr. Rutker did it?
A. Rutker; and the conductor came down.
Q. What is the conductor's name?
A. I couldn't tell you; I am not personally acquainted with him. The conductor came down and got onto the engine and gave his orders, and Rutker asked him what he had in his train. He said, 48 cars; I think it was 48. "Well," he says, "I want to know where they go, what they are." "Well," he says, "we have seven Alexis cars ahead." "Then," he says, "I quit right here."
Q. Let me ask you there, when you speak of seven Alexis cars, what is meant by that?
A. Thos- are the cars that——

Mr. SOUTHARD: Well, now, just wait.
Mr. POTTER: We propose to show that the junction, the connection between the Lake Shore and the Ann Arbor, is by a "Y" at Alexis, and that this is the place of delivery of the cars marked for delivery—marked for Alexis.
The COURT: I think that is competent.
Mr. SOUTHARD: Are there no other cars marked Alexis cars?
Mr. POTTER: Mr. Bradeen can answer that better than I can. As I understand, all cars that come into the Air Line Junction yard, come into the yards of the company, that are marked Alexis are for Alexis delivery or Ann Arbor delivery; I so understand it.

Q. Am I right about that, Mr. Bradeen?
A. That part I am not acquainted with, the marking of cars.
Q. Do you know what is meant by where these cars are
37 marked for Alexis, what is understood by that?
A. Those are the cars that are meant for the Ann Arbor road.
Q. And cars, then, in the trains of the company made up at Air Line Junction, marked "Alexis," on the Detroit run, are for delivery to what railroad?
A. To the Toledo, Ann Arbor and North Michigan railway.
Q. At what point?
A. At Alexis.
Q. Where is the place of delivery in this State, or usual place of receipt and delivery—of the interchange of traffic between the Lake Shore and the Ann Arbor?
A. At Alexis.
Q. Alexis is in Ohio, just this side of the line?

A. Yes, sir.

Q. You may go on. You were told that there were seven cars for Alexis, or Alexis cars.

A. Mr. Sheldon then stepped up and asked him if he had read the order of the court.

Q. Who was Mr. Sheldon?

A. Assistant superintendent of the Michigan division. He said that he had, and he asked him if he understood it. He said that he did. And he asked him if, why he wouldn't go, why he wouldn't take the train out; and he said because there was Ann Arbor cars in the train. And he asked if they were switched out if he would go.

Q. That is, if what were switched out?

A. The Alexis cars.

Q. That is, if they were taken out of the train? He asked the question then as to whether he would make the run?

A. Yes, sir.

Q. And what, if any, answer did he make to that?

A. As I remember it, he said that he would.

Q. What further transpired or what was said, if you remember it—the substance of what was said?

A. Why, he was asked again if he wouldn't go out with the train. He said that he wouldn't; he said that he would quit the service of the company, and that he didn't care to work for them.

Mr. SOUTHARD:

Q. Didn't care what?

A. Didn't care to work for the company any longer.

Mr. POTTER:

Q. What followed that—what did he do, if anything, after that, if you know?

A. He took the engine to the round-house, and Mr. Stanton turned to the fireman and asked him how he felt about it.

Q. What was the fireman's name?

A. The fireman's name was James—N. O. James. And he said that he should do as the engineer done, for the same reasons. We asked him if he would take the engine to the round-house. He said he would. So he cut the engine off and took her back to the round-house track, come into the office, and delivered up his book of rules.

Q. I understand the engine had been before that coupled up to the train ready to move?

A. Yes, sir.

Q. Whereabouts was this train of cars—where was it standing—whereabouts?

A. It was standing on what we call the lower Detroit yard, on #1 track, about five or six car-lengths below the overhead bridge.

38 Q. Upon one of the tracks of the Lake Shore road?

A. Yes, sir.

Q. How far had he moved his engine to make this connection or coupling up from the round-house?

A. Well, it was—he had to back down from the turn-table, round-house proper, about between 300 and 400 yards.

Q. Crossing what tracks?

A. Across what we call the puzzle tracks—puzzle switches. Then he had to move right over both and back onto No. 1.

Q. Does that involve crossing the main line and Air Line division?

A. No, sir; it does not.

Q. Does it involve a crossing of either of the tracks?

A. No, sir.

Q. After he got back to the round-house with the engine what, if anything, transpired or was done?

A. He left his book of rules.

Q. Of which this is a copy?

A. Yes, sir; and we have an air-brake instruction book, and a Fortieth street, Chicago, book, and switch-keys—one switch-key.

Q. At that time he delivered up his book of rules and the articles you have mentioned?

A. I wouldn't say that he delivered them all up, but I think that he did. There was some of them didn't deliver them all up.

Q. What next transpired after that with reference to him?

A. I then had a man we got from Toledo go into the yard and relieve Engineer Conley, 458, and Fireman Westgate called, and to facilitate matters I had the yard master run this engine, 458, onto a side track and send Engineer Conley to the house.

Q. Engineer Conley being one of the parties named here?

A. Yes, sir; the man that stood regular for the run. I saw him coming out across the tables.

Q. You mean by that getting onto the engine—moving it out?

A. He was on the engine, taking the engine out of the round-house, and I went over to the yard master, as I had told them that when the engine got out I would let them know so they would know when to call their crew—conductor and brakemen. I went over and notified them that the engine was coming out. Mr. Sheldon and Mr. Horgan and Mr. Stanton and myself went down to the train. Engineer Conley came around and coupled onto the train, and in a short time the conductor came around and I heard him say to the conductor that he wouldn't go out. We then got onto the engine——

Mr. SOUTHARD:

Q. Who is that, Conley?

A. Conley; yes, sir.

Mr. POTTER:

Q. Was the engine coupled onto that train, do you remember?

A. Yes, sir; the engine was coupled to the train.

Q. Same engine and same train?

A. Yes, sir; same engine and same train. Mr. Sheldon asked what the matter was. He said that he had quit. I asked him why. He said for the same reason that all the rest had; that he wouldn't

pull the Ann Arbor freight. Mr. Sheldon took out the order of the court and asked him if he had read that. I think he said he hadn't, and Mr. Sheldon read it to him. He was asked if he thoroughly understood it, and he said that he did, and Mr. Sheldon asked him if it wasn't on account of the Ann Arbor cars that he
39 wouldn't quit. He said that he had quit the service of the company and wouldn't go. He then asked him if he threw the Ann Arbor cars out he would go, and he said he would—very quickly.

Q. Did you hear the conductor give any instructions to Engineer Conley?

A. I did.

Q. What were the instructions?

A. They they were ready to go.

Q. Had the crew been called—the conductor and the head and rear brakemen?

A. Yes, sir.

Q. The crew to perform the service on that run?

A. Yes, sir.

Q. And the conductor told the engineer that they were ready to go?

A. Yes, sir.

Q. Were there any further orders to give?

A. No further orders except it might be their regular running orders; it might be a clearance card or orders for the train.

Q. Let me ask you one question in regard to Mr. Rutker: Did you hear what the direction of the conductor was to Mr. Rutker when he came up there?

A. He asked him if he was all ready to go, and he wanted to know what he had in the train. He said 48 cars. He asked him where they were going—whefre they went—and he said he had seven cars for Alexis.

Q. Had the crew been called for that run at that time?

A. Yes, sir.

Q. Consisting of the usual crew—head brakeman and hind brakeman and conductor?

A. Yes, sir.

Q. You may go on and state what transpired after that, if you will.

A. Mr. Conley refused to go with the train. We asked him if he would take the engine to the house, and he said he would. He took the engine onto the same track and left it.

Q. The train of cars in the meantime, from the time of the first call—had it been moved at all or had it been standing upon the same track?

A. They had not been moved up to this time.

Q. And the movement of the engine, then, was precisely the same in each instance when they moved it out of the round-house?

A. Yes, sir; the time that I was there.

Q. Mr. Conley took the engine back to the round-house, and then what transpired after that?

A. We called another crew and sent the train out—or another engineman.

Q. Was it any of these parties?

A. None of these parties.

Q. In the parlance used among the men, when you speak of Ann Arbor cars and Ann Arbor freight, what is generally understood by that? Say cars in the yard of the company at Air Line Junction, when you speak of Ann Arbor cars or Ann Arbor freight, what is understood by them?

A. Why, cars—that is, it is understood they are cars—to be taken to Alexis to be delivered to the Ann Arbor road.

Q. When you speak of Ann Arbor freight what is meant by the short term Ann Arbor; what road does that apply to?

A. To the Toledo, Ann Arbor & North Michigan.

40 Q. Do you know whether that road is a road extending into the State of Michigan and Ohio or not?

A. I am told that it is; yes, sir. I never rode on it.

Q. Who was the fireman upon the engine at the time that Conley refused to perform his service?

A. The fireman's name was Westgate.

Q. He is not one of the parties named here?

A. No, sir.

Q. Did he remain upon the engine?

A. Yes, sir.

Q. And went out with the engine upon the next call?

A. Yes, sir.

Q. Did Mr. Conley deliver up the book of rules and these other implements that he had?

A. He delivered up all that he had with him.

Q. Have you any further knowledge with reference to the action of these parties or what they said and done?

A. Nothing that I think of at present.

Cross-examination by Mr. SOUTHARD:

Q. I understand you were not there when Mr. Clark and Mr. Case were upon the engine?

A. No, sir.

Q. When you came to the yard you found Mr. Rutker, or he came shortly after you came?

A. Yes, sir.

Q. And his fireman was James?

A. Yes, sir.

Q. When you read the order you stood where he could see it?

A. Yes, sir.

Q. It was about what time at night?

A. About four-fifteen in the afternoon.

Q. And light in your office?

A. Yes, sir.

Q. And you sent it to the bulletin-board?

A. Yes, sir.

Q. And you think it got there about as soon as he could get there?

A. About as soon as he did get there; yes, sir.

Q. And you know that he went there?

A. I didn't see him go.

Q. After that you saw him upon the engine, as I understood you?

A. No, sir.

Q. Where did you next see him after he left the office?

A. I saw him about 8 o'clock, standing in front of the station, at Air Line Junction.

Q. Do you know what time he was called to go or whether he was called to go out at any particular time?

A. I didn't call him, but——

Q. Do you know anything about it?

A. The records show that he was called for 5.30.

Q. No; I am asking whether you know anything about it.

A. Nothing further than my records.

Q. And next you say—what did he do?

A. Who? Engineer Clark?

Q. No; I am talking about Mr. Rutker.

A. I beg pardon; I thought you was talking about Mr. Clark. I was answering and thinking you was talking about Mr. Clark.

Q. Was it Clark who stood in the office?

A. Yes, sir; Clark stood in the office first.

Q. I couldn't understand you very distinctly; maybe I have gotten this mixed up. Clark stood in the office while you read the order?

A. Yes, sir.

41 Q. And in such a position that you think he could see it?

A. Yes, sir.

Q. You didn't see Clark again until about what time?

A. About 8 o'clock.

Q. That is when you had been called to the office?

A. Yes, sir.

Q. Clark had already, as you understood it, quit the service of the company?

A. Yes, sir.

Q. Then, as I understand you, you sent for Mr. Rutker. Is that it?

A. Yes, sir.

Q. And Mr. Rutker came?

A. Yes, sir.

Q. About what time?

A. I should say it was in the neighborhood of ten o'clock. I couldn't say precisely.

Q. And what do you say you did in reference to showing Mr. Rutker the order?

A. I gave him one to read

Q. Gave it to him to read?

A. Yes, sir.

Q. Where was he at that time?

A. He was sitting on the desk in my office.
Q. And, so far as you could see, he read it?
A. Yes, sir.
Q. And then what did he do?
A. He staid there a few minutes and talked the situation over.
Q. Did you tell him what you wanted him to do then?
A. Yes, sir.
Q. He had been called for the purpose?
A. Yes, sir.
Q. What did you say to him?
A. I said that we had called on him to take engine 420 on a Detroit extra.
Q. And then he went and got upon the engine, as I understand?
A. Yes, sir.
Q. And what did he do?
A. He took the engine into the yard onto the train.
Q. Any further conversation or talk between you and him about that time?
A. After we got onto the train?
Q. Yes.
A. Yes, sir. I asked him if he wasn't going to take the train out.
Q. That was after he had stopped—after he had quit work—was it?
A. When he was coupled to the train.
Q. When he was cutting what?
A. When he was coupling to the train.
Q. How did you come to ask him that?
A. Because it was my place to find out whether he was going or not.
Q. Would you ordinarily ask a man whether he was going or not if you should see him upon the engine in the regular employment?
A. I should if he stated that he was not going.
Q. He said to you, then, that he was not going, did he?
A. No; he said it to Mr. Sheldon.
Q. Where was he when he made that statement?
A. Standing on the right-hand side of the cab of engine 420.
Q. Had he yet boarded the engine—had he yet been upon the engine?
A. He had brought the engine from the round-house on the train.
Q. Do you remember his language?
A. I can remember some of it.
Q. What did he say, as nearly as you can remember?
A. He said that he had quit the service of the company for the same reason that the others had.
42 Q. That was the first thing, wasn't it, that you heard him say?
A. I couldn't say that was the first thing.
Q. Would you say that wasn't the first thing you heard him say in making any objection to taking out the car?

A. I would.

Q. Why do you repeat it as the first thing he said?

A. You asked me what he said to me.

Q. How soon did you speak to him after you heard him make this remark to Mr. Sheldon?

A. Oh, possibly two minutes; I couldn't say. We was talking there several moments.

Q. What did you say to him then?

A. I asked him if he was going to take the train out.

Q. He said he had quit the service of the company. Then what did you say?

A. After awhile asked him if he was going to take the engine to the house.

Q. Didn't you ask him there, when he first stated to you that he had left the service of the company—didn't you ask him then if he had seen the order of the court?

A. I don't think that I asked him that.

Q. To refresh your recollection, didn't he say this: "Yes; I have seen it, but I don't see anything in it which prevents or prohibits me from quitting the service of the company"?

A. No; I never heard him use no such language as that at all.

Q. Nothing like it?

A. Nothing like it; no.

Q. During all of this time the train and engine was upon the side track?

A. Yes, sir.

Q. It had never been in position to start out upon the road?

A. It was in position to start, with an engine behind of ready to shove it out.

Q. After some switching it would have gotten upon the main track?

A. No switching at all.

Q. Did it have to be backed upon the main track?

A. No, sir; hauled.

Q. And there was an engine behind it for what purpose?

A. Shoving it out.

Q. Was that Mr. Rutker's regular run?

A. No, sir.

Q. What remained to be done in order to get that train upon the main track of the road?

A. At that present time?

Q. At the time Mr. Rutker quit the service of the company.

A. Why, it would have had to have been pulled and shoved; pulled by an engine in front and shoved by an engine in the rear.

Q. How far?

A. They stood about, I should judge, 10 car-lengths from the main track—that is, to get on the main track. They stood beside the main track, but they would have to go about ten car-lengths to reach the main track, to pass over the switch onto the main track. I should judge that, in cars.

Mr. POTTER:

Q. In feet that would be about 300 feet?
A. 300 feet.

43 Mr. SOUTHARD:

Q. That was not Mr. Rutker's regular run, as I understand?
A. No, sir.
Q. Do you know whether he had been in the service of the company during that day?
A. He had been running the engine, I think.
Q. Do you know how many hours he had been continuously at work that day?
A. The day-men work——
Q. No; I am speaking about Mr. Rutker.
A. Probably about 11 hours.
Q. The man who was upon the engine with him—the fireman, Mr. James—do you know whether he had been working that day?
A. I couldn't say.
Q. You had no conversation with him?
A. I had none.
Q. Have you any means of knowing whether he saw the order of the court there?
A. He was sitting within two feet of it at the time Mr. Sheldon read it.
Q. At the time Mr. Sheldon read it?
A. Yes, sir; if I remember right. Mr. Sheldon read it.
Q. Where was that?
A. On the engine.
Q. That was after Mr. Rutker had quit the service of the company or had announced his intention to quit, wasn't it?
A. I think it was.
Q. Before that time do you know that Mr. James had any knowledge of the existence of any such an order or paper as was read there?
A. It was his plain duty to have it; it was posted on the board.
Q. No. Answer the question.
A. Not any more than the rules of the company would require a man to have it before he starts out.

The COURT:

Q. How long had the order been on the bulletin-board?
A. It was placed there about 4.15 p. m.
Q. Of that same day?
A. Yes, sir.
Q. That is the first day it had been put on the bulletin-board?
A. Yes, sir.

Mr. SOUTHARD:

Q. Do you know what time Mr. Rutker and Mr. James left work that day—I mean to go to their homes? I understand that they

had been in the service of the company—they were switching in the yard.

A. Yes, sir; I presume so.

Q. Their regular work was switching in the yard?

A. Switching in the yard and extra road-work.

Q. Do you know what time they stopped work upon that day?

A. I don't.

Q. Do you know that they had been in the yard at all during that day—during the time that this had been upon the bulletin-board—until they came down about the time you saw them?

A. I don't.

Q. I understand you to say that the order was placed upon the board somewheres between four and five o'clock?

A. Yes, sir.

44 Q. And this talk that you had with Mr. Rutker was about what time?

A. I should judge about 10 o'clock in the evening; it might have been a little before or a little after that time.

Q. Then you had called Mr. Conley or you sent a man to take charge of his engine and called him to the round-house?

A. Yes, sir.

Q. And with him a fireman whose name I didn't get?

A. The fireman's name was Westgate.

Q. Mr. Conley also did extra road-work sometimes, did he?

A. Yes, sir.

Q. The order was also shown to him after he announced his intention to quit the service of the company?

A. I couldn't say that it was after he had announced his intention to quit. It was after he had announced his intention not to pull Ann Arbor freight.

Q. Wasn't the first thing that he said or did to quit the service of the company after you began talking with him?

A. Well, I didn't commence talking with him until after Mr. Sheldon had.

Q. You heard him say that he was not going out?

A. I heard him say he was not going out.

Q. You asked him why, as I understand, and he said he had quit the service of the company.

A. Yes, sir.

Q. And this was substantially all that you heard?

A. A. Why, no; there was other conversation there.

Q. All that was said afterwards was that if they would remove the Ann Arbor cars or Alexis cars he would take the train out?

A. Yes, sir; that is about all that was said.

Q. The train, as I understand, remained in the same position that it was during the time that Mr. Rutker was there?

A. Yes, sir.

Q. It hadn't been moved?

A. No, sir.

Re-examination:

Q. You speak of Mr. Conley being called out of the yard, as I understand? He was performing switch service and extra service?

A. Yes, sir.

Q. You mean by extra service—that is, taking the place of regular runs, runs of regular men, where occasion required?

A. Yes, sir.

Q. Was that usual and customary?

A. Yes, sir.

Q. Had he performed like servive before?

A. Yes, sir; a great deal of it.

Q. And these engineers which you have mentioned, Mr. Rutker?

A. Yes, sir.

Q. Was it usual and customary and had he performed like service before?

A. He had.

Q. Was it a rule and custom of the company usually where, for instance, a call was made for an engineer for a regular run and the engineer was sick or could not go?

A. It was a necessity that we have old men in the yard that can do road-work.

Q. Familiar with the service and can do it?

A. Yes, sir.

45 Q. Competent and fit to perform the service?

A. Yes, sir.

Q. You say that at this time all that needed to be done to move the train on its way to Detroit was for the rear engine to push and the head engine to pull?

A. Yes, sir.

Q. As I understand, there was an engine hitched on the rear end of the train at that time?

A. I looked down to the rear end of the train and saw an engine and caboose standing there. I didn't go down there.

Q. You saw an engine standing there at the rear and caboose and on the same track and close to it?

A. Yes, sir; coupled to it, I should say.

Q. In the movement of a train where do the signals come from, the head engine or the rear engine?

A. The engineer of the engine at the head end would whistle "off brakes," and as soon as he whistled three times, which would be a signal that he was ready to go, the men behind would answer the same way, and they would go.

Q. What did the men behind consist of?

A. Switch-engine—regular yard crew.

Q. Yard crew, consisting of fireman and engineer and yard conductor and yard brakeman?

A. Generally two yard brakemen.

Q. How long was that yard engine kept there; how long did you see it?

A. I couldn't say as to that.

The COURT:

Q. In employing the engineers were they employed for any fixed term?
A. No, sir.
Q. How do you employ them?
A. I do not employ them.
Q. You don't know anything about that?
A. No, sir; I have no authority.

Mr. POTTER:

Q. Do you know how the engineers are paid, whether by the trip or by the day or by the week or by the month?
A. Yes, sir; they are paid by the mile.
Q. How often are they paid; when are they paid?
A. They are paid once a month, between the 15th and the 23d or the 24th; anywheres in there, as they catch the pay car.
Q. And paid according to the scale of service?
A. Yes, sir; the schedule of wages that is laid down for them.
Q. State- in the order that has been read here?
A. Yes, sir; that is general order No. 6.

46 Mr. POTTER: I will read in evidence the notice issued by Mr. Canniff, which he put upon the bulletin-board:

"LAKE SHORE & MICHIGAN SOUTHERN RAILWAY CO.,
"TOLEDO, OHIO, *March 17th*, 1893.

"To all employés:

"Having been advised that certain employés of this company will decline to handle the interchange business of this company and the Toledo, Ann Arbor & North Michigan R'y Co., attention is called to the attached mandatory order of the United States circuit court, which makes it imperative on this company, its managing officers and all its employés, to comply with the orders of said court.

"W. H. CANNIFF, *Gen'l Sup't.*"

(Here follows copy of order of court, Exhibit No. 1, heretofore offered in evidence.)

Mr. POTTER: I will also offer and read in evidence another rule of the company, from the rules and regulations:

"Rule 742 (under division applicable to enginemen or locomotive engineers). They must have a copy of the latest time-table and a full set of signals; must examine bulletin-board in the engine-house before starting on each trip; compare time with the conductor, personally, before starting; personally comply with rule 95 of train rules."

I will call Mr. Sheldon.

47 Also G. A. SHELDON, who, first being duly sworn, testified as follows:

Direct examination by Mr. SOUTHARD:

Q. What is your service?

A. Assistant superintendent of the Michigan division.

Q. How long have you be-n in the service of the Lake Shore Railway Company?

A. Abo-t two years and three months.

Q. At what point or location?

A. At Toledo and Elkhart; I started in at Chicago.

Q. On the 17th and 18th instants were you performing service as assistant superintendent of this division?

A. Yes, sir; at Toledo.

Q. Were you made aware of and acquainted with the order of the circuit court of the United States giving direction to the Lake Shore and Michigan Southern Railway Company with reference to the interchange of traffic with the Toledo, Ann Arbor & North Michigan Railway Company?

A. Yes, sir.

Q. About when did you first obtain a knowledge of that order? The order was issued, I understand, on the 12th.

Mr. SMITH: It was issued from this court on the 13th—Monday—process was issued.

WITNESS: I can't state the exact time, but very soon after it was issued several copies were brought to our office and handed to me by the general superintendent and I read them there.

Q. About how many copies were left by the United States marshal in your office?

A. I should say fifty (50) or over.

Q. They were printed orders, as I understand, were they?

A. Yes, sir.

Q. Can you identify them?

A. Yes, sir; those are the ones. (Witness refers to copies of order in hands of counsel.)

Q. The order attached to Mr. Canniff's notice is a copy of the order left with you?

A. Yes, sir.

Q. To what extent were these printed orders distributed—posted up or distributed?

A. They were distributed on all of the bulletin-boards.

Q. Whereabouts are the Lake Shore bulletin-boards here in the city?

A. There is one at Air Line Junction, one in the passenger-conductor room at the depot, and in the body of the round-house, and that would be all, in the round-house at Air Line Junction; the round-house is near the station.

Q. Do you know the extent or otherwise to which they were distributed to the men or handled or sent out generally?

A. No, sir; I don't.

Q. Now, I wish you would go on and state in your own way what connection you had or what you had to do with giving in-
48 formation to the employés of the company, to whom given, and where given and when, especially with reference to these parties named in this application.

A. The case of Engineman Clark and Fireman Thompson I had nothing to do with other than going down to the station at Air Line Junction after I had heard that they had left their engine and asked to see Mr. Clark in the office a moment, and he refused to come. Meanwhile I remained there, and Fireman Kessler and Engineer Case were ordered to take that engine out. I waited, and Mr. Horgan remained with me. When the engine came out into the yard Mr. Horgan and myself stepped upon the engine. Mr. Case himself said nothing. He backed down onto the tra-n in the ordinary way, and his engine was backed on and coupled to the train. Then Conductor Albright stepped upon the engine and handed him the clearance card, which he read.

Q. Just indicate what is meant by the clearance card.

A. It is a card issued by the operators to the conductor and engineman stating that they have permission to leave the terminal or any other point where a semaphore is, showing that there are either no orders for them or that they can pass the semaphore, or there are several reasons for issuing them.

Q. In other words, it is to "go"?

A. In other words, to go; it tel ls them to pay no attention to the semaphore.

Q. Mr. Albright was the conductor?

A. Yes, sir. He stepped upon the engine and handed the clearance card to the engineman, Case, and he read it. Then Mr. Case asked him how many cars he had. I think he said 48. He asked him if there was any Ann Arbor freight, and Mr. Albright said, "Yes; seven cars." Then Mr. Case said, "I quit." Mr. Horgan was on the engine and also Conductor Albright. I said to Mr. Case, "Hold on a moment." I had an order with me. I asked him if he understood the mandatory order of the court. I took out the copy which I had and read it to him and asked him if he understood it. He said that he did. Then I turned to the fireman and asked him if he was in the same box. The fireman's name was Kessler. He said that he was. Then Mr. Case said that he had resigned. I remonstrated with — otherwise, and he said that it was useless; that he had resigned. He said he would do me the favor of taking the engine up near the round table and delivering it up. I got off the engine, and he delivered up his engine, and he did so, and delivered up his engine.

Q. Did you have any further conversation with him?

A. Not at that time.

Q. Was there any inquiry made of him in reference to the switching out?

A. No, sir.

Q. You say the engine was coupled up to the train?

A. The engine was coupled to the train; yes, sir.

Q. Do you know whether there was an engine at the rear of the train or not?

A. There was an engine at the rear of the train. I didn't see the engine, but I know one was there, because they told me so.

Q. What transpired next?

A. Then our understanding was that another crew was ordered for that engine. In the meantime I had seen Mr. Bradeen, and we waited around there to get onto the next engine that came out of the engine-house.

49 Q. Who, besides yourself, waited?

A. Mr. Horgan and Mr. Stanton, the train master, and Mr. Moore, acting general yard master, and Mr. Bradeen and myself.

Q. You may go on and state what next transpired.

A. Then, about 10.30, Engineman Rutker brought the engine out. Before he left the switch that leads into the yard proper I stepped on his engine, followed by the other parties I have mentioned, and Mr. Rutker backed onto the train.

Q. You mean coupled up the train?

A. Backed on and coupled up the train. Conductor Albright stepped onto the engine and handed him the clearance card. Mr. Rutker asked him how many cars he had and whether there was any Ann Arbor freight in the train. Upon being informed that there was he said, "I quit," and he went on and talked a little bit. I don't remember exactly what he said, but it was nothing pertinent to this case. Then I asked him if he had read and thoroughly understood the mandatory order of the court. Mr. Rutker said he did, but he didn't understand that it prevented him from quitting when he wanted to. Then I asked him if he would take the train out if we switched out the Ann Arbor freight. He hesitated a little and I repeated the question and he said he would. Immediately after he said: "Well, I will quit; you have got me in for it now," and, with a few other remarks, he took the engine up to the turn-table.

Q. What fireman was with him?

A. N. A. James.

Q. Did you have any conversation with him?

A. I addressed my conversatien to Mr. James and Mr. Rutker, but particularly to Mr. Rutker.

Q. Where was the fireman?

A. The fireman was sitting on the seat.

Q. How far from you?

A. I was about midway in the gangway; it was right in the cab—very close. After I had finished ta-king, Mr. Stanton turned to the fireman and asked him if he felt the same way, and he said that he did, and Mr. Stanton remonstrated with him, but it was of no use. Then, when Mr. Rutker brought the engine to the turn-table, I asked him why he resigned. He said it was for the same reason that the others did. I asked him why that was, and he said it was because he would not pull Ann Arbor freight. Then we left the engine, and that was the only connection I had with the case.

Q. You spoke of Mr. Stanton; Mr. Stanton was——

A. The train master.

Q. Is that the extent of your connection with the parties whose names are in this application?

A. No, sir; I was connected with the case of Engineman Conley.

Q. Go on and state that.

A. We understood—and when I say "we" I mean those who were in the locomotive department, Mr. Horgan and Mr. Stanton and myself—that Engineman Conley was ordered for that train and also that he was going, so, instead of getting upon his engine, we went down to the train and waited; got him to back up. He came down and backed his engine onto the train and coupled on—the coupling was made—and he waited there a few moments—the conductor was a little late—and he got outside to oil the engine. When he was oiling we stood there where we could see him, and the conductor—I don't remember his name—another conductor had been called up for the train entirely—he came up and said, "All right," and Mr. Conley said something to him which I couldn't hear, but I supposed he asked him what sort of freight he had, and I heard Mr. Conley say something to the effect that "I resign" or "I quit," and he stepped from his engine. Immediately I stepped onto the engine, Mr. Stanton and Mr. Bradeen and Mr. Horgan following, and I asked him if he would take the train out. He said he would quit. Then I told him to hold on for a moment, and I took out the mandatory order and carefully read it to him and asked him if he understood it, and he said that he did. We remonstrated more with him, and then I asked him if he would take out the train if we switched the Ann Arbor freight out, and he said "yes;" that he would. Then I otherwise remonstrated with him, and he, understanding that the freight was not to be switched out, still held to his resignation. I asked the fireman if he felt the same way, and the fireman said he was willing to go.

Q. What was his name?

A. Westgate. Then, after that, I asked Mr. Conley why he resigned, and he said for the same reason that the others did. I asked him one or two questions in order to see if it was because they wouldn't pull Ann Arbor freight, and he said it was. That was the only—then I left the engine at that time, and I presume he took it up near the round-house and delivered it up.

Q. That is as far as your knowledge goes?

A. Yes.

Q. That was the end of the transaction so far as these men were concerned?

A. Yes, sir.

Q. Were you there when the train was afterwards taken out?

A. Yes, sir.

Q. How long after that was it before it was moved?

A. When Mr. Conley refused, it was about 1.30, and the train started out at about 5.30 in the morning.

Q. What did these parties say as to the extent of their knowledge as to the order that the court had made prior to your reading it—if they knew anything about it or had received knowledge of it?

A. They didn't say anything otherwise than that they understood it.

Cross-examination by Mr. SOUTHARD:

Q. In each case, as I understand it, this order was read to those men after they had quit the service of the company?

A. After they had said they would quit.

Q. Did they ever resume service again after they said they had quit?

A. No, sir; not any more than to take the engine up near the round-house.

Q. And they said they would do that as a favor to you?

A. Mr. Case said that, but the others didn't say that.

Q. Did you request them to take the engine where they did take it, or did they do that of their own accord?

A. I don't think I made any direct request, but there was a sort of understanding that they were to take this engine up there themselves. They said, "Then I will take the engine up there and deliver it up." We gave them to understand it would be agreeable to us to do so.

Q. Why was it that you didn't show them the order before
51 they quit the service of the company?

A. Because we had no reason for knowing that they wouldn't take the train out.

Q. Why didn't you make certain that they knew about the order of the court?

A. Because we have a rule that requires every man to go to the bulletin-board and see the orders before.

Q. Why did you take the trouble afterwards to read the order to them?

A. To be positive that they understood the order and give them a chance to reconsider.

Q. You wanted to be positive—reconsider what?

A. Reconsider their resignation.

Mr. POTTER:

Q. Let me understand with reference to Mr. Rutker. When was the order shown to him—before he said he would quit or after he said he would quit?

A. I didn't read the order to Mr. Rutker. I asked him if he thoroughly understood it.

Q. Understood what the order was?

A. Yes, sir.

Q. And his response was——

A. His response was that he did, but he didn't know that it necessarily concerned him.

Q. The question that I asked you was whether he said that before or after he said he quit work.

A. It was after.

Q. At that time he said he had seen or knew of the order and understood it?

A. Yes, sir.

Q. Was it that he didn't know that it concerned him, or that he didn't know that it prevented him from quitting the service of the company, or both?

A. It was that he didn't know that it concerned him. I didn't then just exactly understand what he meant by it.

Q. Did you have any further conversation with him about it?

A. Not directly on that point, except that I tried to tell him that it was a serious thing—a serious act—that he was doing and had some conversation to that effect.

Q. What time was this that you had this conversation with these men, Rutker and Conley?

A. It was about 10.30 p. m. of the 17th when we got onto Mr. Rutker's engine and about 1.30 a. m. of the 18th when we got onto Mr. Conley's engine.

Also F. O. ALBRIGHT, who, first being duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. You are in the service of the Lake Shore & Michigan Southern Railway Company?

A. Yes, sir.

Q. As conductor of its freight trains?

A. Yes, sir.

Q. What is your run?

A. Between Detroit and Toledo.

Q. You have been in that service how long?

A. About five years.

Q. What was your service on the night or the afternoon of the 17th of March—what were you doing?

A. I was called for the extra train to Detroit.

Q. For the Lake Shore road?

A. Yes, sir.

52 Q. Where do you take it from?

A. Air Line Junction.

Q. Train is made up there for you to take, is it?

A. Yes, sir.

Q. You take it from there and proceed to Detroit?

A. Yes, sir.

Q. And in the performance of your service as conductor of the train have you any occasion to take the numbers of your cars and the places of their destination?

A. I have to take the numbers, all car numbers and the initials.

Q. I will ask you to state to the court if in the train that you had that evening, your extra for Detroit, you had in it what was called Alexis cars.

A. I had seven cars for Alexis; yes, sir.

Q. What were they laden with, if anything?

A. Coal.

Q. How were they marked?

A. I think they were marked Alexis; I am not positive.
Q. Did you see them yourself?
A. I see the cars; yes, sir; took the numbers of them.
Q. Were they al- together?
A. Yes, sir.
Q. At the head end of the train or rear end of the train?
A. Head end of the train.
Q. Did you take the numbers of those cars?
A. Yes, sir.
Q. Have you got the numbers with you?
A. Yes, sir.
Q. Let me ask you before you go into that what do you mean by Alexis cars?
A. Cars for the Ann Arbor road.
Q. You mean by the Ann Arbor the Toledo, Ann Arbor & North Michigan Railway Co.?
A. Yes, sir.
Q. The connection is at Alexis, between the two roads, the Lake Shore and the Ann Arbor, so called?
A. Yes, sir.
Q. Will you give the numbers?
A. I have them in my book in my overcoat. I will get that. (Gets book.) 1058, C., L. & W.
Q. Did you know the distination of that car? Flint, Mich., wasn't it?
A. Flint, I think, they are billed to. They are billed to Alexis. They go to Flint, though. Some is marked Flint.
Q. Flint is in the State of Michigan?
A. Yes, sir.
Q. Give us the next number.
A. 3589.
Q. Where was that billed to?
A. Alexis.
Q. And destination what?
A. Well, all seven cars billed to the same place; all billed from Air Line Junction to Alexis. I think the Ann Arbor makes their own bills; I am not positive about that, either. We merely have what we call switching cards.
Q. Give us the next number.
A. 4211.
Q. The same——
A. Same initials.
Q. As to that?
A. Yes, sir.
Q. Give us the next number.
A. 4328, 4240, 1264; 12639 is D.
Q. Can you give the initials of the other cars?
A. They are all C., L. & W.
53 Q. The last-named D, 12639?
A. Yes, sir.
Q. Were those the cars that you mentioned to the engineer

A. Yes, sir.
Q. What time did you report at Air Line for the purpose of entering upon this run?
A. 4.30, I think.
Q. What time did you actually depart from Air Line Junction with the train?
A. I didn't depart with it at all.
Q. You didn't go out at all?
A. No, sir.
Q. Do you know what time the train did leave?
A. No, sir.
Q. You don't know who left with it?
A. I think a man by the name of Hitchcock did.
Q. You were not there when he left?
A. No, sir.
Q. How long were you there?
A. I was there until 12.30 that night.
Q. Midnight?
A. Yes, sir; after midnight.
Q. Was the train there at that time?
A. Yes, sir.
Q. Hadn't left?
A. No, sir.
Q. Your car; where was your car?
A. My car was the caboose, was on the train, and the rear brakeman was in the caboose. The head brakeman was to the front.
Q. Been waiting all that time?
A. Yes, sir.
Q. I wish you would go on and state to the court, if you will, just what transpired between you and the engineer with reference to moving the train. State it in your own way what first transpired.
A. Well, when I got up to the engine, the engine got up pretty near down to the car. The engineer stopped, I think, about a car-length from the cars; the engine stopped. It might have been half a car-length.
Q. Who was the engineer?
A. Mr. Clark; and I was going to hand him the clearance card which we have to get before we leave, and he said he guessed he would quit. He opened his box then—the box where they keep their clothes—open his box, got his coat or something else—dinner basket—and got off the engine and was down.
Q. What, if anything, did he say to you or you to him with reference to there being Ann Arbor freight or Ann Arbors cars?
A. He didn't ask me about the Ann Arbor cars, Mr. Clark didn't.
Q. What, if anything, did you say to him?
A. I said nothing to Mr. Clark, if I reme-ber right.
Q. What did he say was the occasion of resigning or of quitting?
A. I didn't ask him why he would quit. He said he would quit. He knew the cars was on the train. He had got down off his en-

gine and gone and looked at the cars. I didn't know they were going to put these cars on the train until he told me.

Q. Told you they had put the cars on the train?

A. Said they was going to. I didn't know I was going to get the train of cars. I had the 41 besides those. The train was made up in the Air Line yard; pulled them down in the hole # 1. It was after leaving-time the switchmen switched those seven cars on the train; after leaving-time.

54 Q. Well——

A. They were on the train when he backed down on the train.

Q. Did you see him off his engine looking to see if the cars were on the train?

A. I saw him on the ground; yes, sir.

Q. What did he say to you about his knowing that there were these cars on or attached to or coupled to the train?

A. All I remember him saying they were going to put some cars on there for Alexis. I was waiting to go out—had my bills only for those cars.

Q. When was it that he said that?

A. Oh, that was—I think that must have been about 5.40. It was after leaving-time, anyway.

Q. How long after that was it that he said he had quit?

A. I think it must have been very near 6 o'clock.

Q. In the meantime what had he been doing?

A. I suppose he got his engine out the round-house and backed down from the round-house to the train.

Q. What next transpired? What did you do? What did Mr. Clark do? Go on and recite to the court what he did.

A. He backed the engine down on the train within, as I say, a car-length or a half a car-length and didn't couple on. I was to couple on, but he didn't. He didn't come down far enough. He said he had quit; he had got done working for the Lake Shore.

Q. Where was he when he said he had quit?

A. He was on the engine.

Q. Where was he?

A. He was right by the side of the engine.

Q. What did he do then?

A. He got his dinner basket and some clothes out of the box and got off the engine.

Q. Where did he go?

A. I forget whether he went to the round-house or whether he took the engine to the round-house in going—walking up to the office.

Q. Had you any further conversation with him? What next transpired?

A. I went to the office. That is all there was of it. I had to wait until they cal-ed another engineer.

Q. How is that?

A. I w-nt to the office. They had to cal- another engineer. There was another engineer called—a man by the name of Case.

Q. Go on and tell what transpired.

A. He backed down and I think he coupled on. I think I coupled him on myself. I got on the engine and give him a clearance card and compared watches. He asked me what I had. I told him 48 cars—7 Alexis, 11 Monroes, 7 West Detroit, and the balance Detroit—and he got down off the car and said he would quit.

Q. What, if any, reason did he give to you why he quit?

A. Well, he didn't say anything to me. I think Mr. Sheldon was on the engine, and I think Mr. Horgan was on the engine, if I am not mistaken.

Q. What, if anything, did you hear him say why he quit?

A. I am quit.

Q. You say he said he wouldn't pull scab freight or wouldn't scab it? Was he on the engine at that time?

A. Yes, sir.

Q. What transpired after that with reference to anybody's getting on the engine?

A. I couldn't say. I got off the engine then. That was all there was of it.

55 Q. What next transpired after that?

A. That engine went to the house. I again told them and they went after another engineer. I think this must have been about—I couldn't say what time that was; I think it was after 10 o'clock, though. A man by the name of Richter or some such name——

The COURT:

Q. Rutker?

A. Rutker. I guess that was the name. He backed down on the train also.

Mr. POTTER:

Q. Did he couple up to the train, do you remember?

A. I think he did; yes, sir.

Q. Who coupled up for him?

A. I think my brakeman coupled him up. I give him the time and clearance card. He asked me what kind of a train I had. I told him the same as I did the other men—seven Alexis. He said all right he would quit. I think Mr. Sheldon was on the engine and, if I am not mistaken, Mr. Bradeen and Mr. Horgan; and if I am not——

Q. What, if anything, did he say with reference to the order of the court for the movement of those cars? What information did he have with reference to that?

A. I think Mr. Sheldon read the laws to him, or something of that kind, or asked him if he understood them, or something of that kind. He said yes. I forget how it was.

Q. How is that?

A. I forget whether he read them to him or asked him if he understood them; I ain't positive now which.

Q. When was that—while he was upon the engine?

A. While it was in the yard—coupled on—and upon the engine.
Q. In the cab, was it?
A. He was in the cab—in the engine—yes, sir.
Q. What did he say, if anything?
A. He said he would quit.
Q. And what next transpired?
A. Well, he said he was a little hot, anyway. He said he had worked 13 hours and didn't think it was right to call him for that engine to go out to Detroit. He said he quit; he could get a dollar a day down town; he was satisfied to do that rather than to take the engine out.
Q. What next transpired?
A. That is all that I can state. I got off the engine and Mr. Sheldon was there, and I think Mr. Stanton was there, too.
Q. Anybody else near?
A. Not to my knowledge. I was notified then by—Mr. Sheldon notified me that they would give me another train to run.
Q. That ended your connection with it, then?
A. Yes, sir.

The COURT:

Q. Notified you of what?
A. Notified me that they would give me another train to run, behind 130.

Mr. POTTER:

Q. The ordinary crew consisted of yourself and brakemen?
A. Yes, sir.
Q. Was there any train coupled up at the end of this train?
A. I believe there was.
56 Q. And was it customary and usual to have a pusher?
A. It generally was; yes, sir.
Q. The movement of that train was governed by the head engine?
A. Yes, sir.

Cross-examination by Mr. SOUTHARD:

Q. You had no conversation with Mr. Clark before he quit the company's service?
A. I don't remember of any; no, sir. No; I don't know as I had any with Mr. Clark.
Q. You said something about his saying to you that they were going to put some Alexis cars——
A. Yes; that was before we got onto the train or before his engine backed down on the train.
Q. Where had he been, if you know, from the time he told you this until he backed down to the train?
A. Well, he was on the ground when he told me about this.
Q. You have given us the numbers of some cars here. Do you know anything about what points they were billed to beyond Alexis?

A. Well, I couldn't say with regard to that. I know they were billed to the T. A. A., Alexis, because I checked them off of my book and marked them on that.

Q. I don't suppose you know whether Mr. Clark had any knowledge of that or not?

A. Well, only what he said. They were going to put some Ann Arbor cars on there.

Q. Do you remember whether he said Ann Arbor cars or Alexis cars?

A. Alexis is the general thing.

Q. Did you ever know of any C., J. & M. cars to go to Alexis?

A. We used to pull some; yes.

Q. Those would be billed to Alexis also, wouldn't they?

A. Yes, sir.

Q. The only man to whom you heard the order read was Rutker?

A. Yes, sir; Rutker or Mr. Case. I know Mr. Sheldon was on both engines, and in fact asked both of them if they understood the laws. I don't think he was on Mr. Clark's engine. I am quite positive he was not.

Q. How far were you from them when this reading was done?

A. Well, I was on the engine part of the time when Mr. Sheldon commenced reading it.

Q. What was it that he read?

A. I couldn't tell it to you.

Q. Do you know whether he read extracts from what is known as the interstate commerce law?

A. I think that was it.

Q. Did he read anything else, so far as you know?

A. I couldn't say as to that. I immediately got off the engine. I didn't stay there a great while.

Q. You don't in fact know what he read or the substance of it?

A. No, sir.

Q. Did you know then?

A. I don't know as I did. The cab was full of men; in fact, I didn't pay much attention to it, anyway.

57 Q. Had you seen or did you know anything about what he was reading at the time he was reading it?

A. Well, I know he asked the engineer if he understood something about——

Q. Yes; you know, but wasn't the engineer——

Mr. POTTER: Let him answer the question.

Mr. SOUTHARD:

Q. You may answer it.

A. I was going to say that I heard him ask Mr. Case or Mr. Sheldon—I forget which one it was; in fact I don't know but it was both—if they understood the laws or the interstate commerce laws or something of that kind.

Q. Was that as much as you did understand about it?

A. Well, he commenced reading; I got off the engine; I couldn't

get inside the cab, anyway. I think Mr. Moore was in fact there, too.

Q. Can you now or could you then give in substance what was read?

A. I might if I heard it read over again.

Re-examination:

Q. The information that you communicated to the engineer was to the effect that these other cars for delivery to the Ann Arbor road——

A. No, sir; there wasn't anything said about Ann Arbor road at all. I told him I had seven cars for Alexis.

Q. And he said, "I will quit"?

A. Yes, sir.

Q. And what was it he said was the reason why he quit?

A. One of those men—it wasn't Mr. Clark; I think it was Mr. Case—claimed he could get an honest living; wanted to get an honest living; didn't want to take anybody else's job.

Q. I am speaking of this particular occurrence. Did he say the reason why he quit, this man you are now speaking of?

A. I don't know as he did; I don't know but he did.

The COURT:

Q. You say he wouldn't pull scab freight?

A. He never claimed that.

The COURT: In your examination-in-chief—I don't know which one—but you said one of those men said he wouldn't pull scab freight; that he would quit; would not pull scab freight.

Mr. POTTER: I wish you would look at these papers and see if they are the way-bills of the cars that you have designated.

A. Those are not the bills I had; no, sir.

Q. Not the bills that you had?

A. No, sir; I had what they call switching tickets. They are a little yellow bill about that long, I should think. I didn't have those bills at all.

58 Q. What is done with those switching bills? What becomes of those little bills?

A. They are left at Alexis with the cars.

Q. Are there upon those bills the final destination of the cars, or simply the fact of the delivery at Alexis?

A. Well, I didn't take notice of those bills, to tell the truth about it. I know I noticed the top bill was billed from Air Line Junction to Alexis, T. A. A.

Q. You say that some of them were destined for Flint. Where did you get that information? From them bills?

A. There is some cars billed through. I don't know whether those were or not.

Q. Where did you get the information of the destination to Flint, Mich.?

A. There is lots of them goes to Flint. All those that went to the Grand Trunk, for instance, goes to Flint; marked Flint, in fact.

Q. Did you know yourself from the bills that you had whether they were to be delivered to the Ann Arbor or some other road?

A. I noticed Ann Arbor in particular. The top bill—I think I looked at it—was billed to T. A. A.

Q. That meant the Toledo, Ann Arbor & North Michigan?

A. I suppose it did.

Q. That was one of the cars that you had in your train. Did you examine the others?

A. I don't know that I did; no, sir.

Q. The information you gave your engineer was that there were seven cars for Alexis?

A. For Alexis.

Mr. POTTER: We have the original way-bills here. I have checked off these numbers given by Mr. Albright, and they show where they were received by the Lake Shore and to what points billed. We have the original way-bills here, and if you will permit me I will state from these where they were received and to what point destined: "The Cleveland, Lorain & Wheeling R. R. Co., Mar. 15, 1893. Through freight manifest via L. S. & M. S. R. R., from Wheeling to Toledo. Consignor, O. W. C. Co.; destination and route, C. & G. T. R'y, c | r T. Somme, Flint, Mich., via T. & A. A., N. M. car No. 4328." I will give the numbers of the cars. The bills are identically the same, billed from the same parties via the Lake Shore from the same point, billed to Flint, Mich. The next car-, 4240, 4211, 3589, 1058, 1264, and 12639 D, all dated March 15, 1893, and via Elyria, via the Lake Shore & Michigan Southern Railway Co., via the T., A. A. & N. M., and then by the Grand Trunk.

WILLIAM C. MERRILL, being first duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. Give us your name in full.

A. William C. Merrill.

Q. What is your service?

A. Yard master at Air Line Junction.

Q. How long have you been yard master at Air Line Junction?

A. A little over 12 years.

59 Q. And night service or day service or both?

A. Days; day service.

Q. Were you on duty on the 17th of March last?

A. Yes, sir.

Q. What time did you go on duty?

A. I think that morning about quarter to 6.

Q. When did you get off duty that day?

A. I don't know; I remember it was pretty late.

Q. I wish you would state to the court what are your duties generally and briefly as yard master at Air Line Junction in the movement of trains at that point.

A. My duties are to station the men, see that the other division yard masters do their business, and order trains.

Q. In ordering trains, how is it done?

A. I ask the round-house for an engine at a specified time, make the order on Mr. Bradeen, the engine-dispatcher.

Q. Make an order on Mr. Bradeen, the foreman of the round-house, for an engine for some particular train?

Q. For some particular train for some particular time.

Q. And in the usual course of business, what necessarily follows after that in order to execute the order?

A. The round-house furnishes us that engine at such a time and sends it out into the yard, giving us the number of the engine and the name of the engineer.

Q. Who comes with the engine?

A. The engineer.

Q. Anybody else?

A. The fireman.

Q. That constitutes the crew of the engine, does it?

A. Yes, sir.

Q. And in the usual course of business what do they do after the-come down?

A. They bring their engine around in front of the office and stop until their train is ready—until they are directed to go to the designated place.

Q. Then what?

A. Then they get onto their train; we get them out.

Q. Couple them up and they go on their way?

A. Yes, sir.

Q. I wish you would go on and state to the court briefly and as concisely as you can, in your own way, just what transpired in reference to the moving of the train on the afternoon of the 17th, where the several engineers were called whose names have been mentioned here. Just go on and state what transpired within your knowledge with reference to the orders of the company and the execution of the orders, what occurred.

A. We had a Detroit extra ordered at 5.30, and the engine was out in good time and we pulled the train down. In the lower yard was about seven cars for the Toledo & Ann Arbor road on that train. I sent out crews on the train and the engine was backed down; engine 420 was brought around onto the train by Mr. Moore, the general yard master, and Mr. Horgan and Mr. Moore got up on the engine and had some conversation with Mr. Clark, and Mr. Moore notified me that the engine wouldn't go out. I ordered
60 out switch-engine from out behind the train and the hostler was sent after 420; took the engine to the house.

Q. Go on.

A. Mr. Sheldon come there and took charge of affairs, and I helped him get out 420. Mr. Case—but I didn't hear any of the conversation at this time. I was busily engaged all the time getting out other trains in the yard—the yard all blocked.

Q. You may state, if anything, what transpired with reference to Mr. Case.

A. No, sir; I didn't see Mr. Case at all.

Q. Do I understand you to say that there was an engine coupled up to the rear of this train?

A. Mr. Clark's train; yes, sir.

Q. Do you know how many cars there were in that train—about how many?

A. I think he had 48 cars, all told—caboose and all.

Q. What, if anything, do you know with reference to the number of cars for delivery to the Toledo, Ann Arbor & North Michigan Railway Co.?

A. He had seven cars of coal, I know.

Q. Where were they, at the head end of the train?

A. First seven cars; yes, sir.

Q. Had Mr. Case coupled up to the train, do you know?

A. Mr. Clark stopped before he struck the train. Mr. Case'w engine was coupled ont- the train.

Q. Mr. Case coupled up to the train?

A. Yes, sir; coupled onto the train.

Q. Did you have anything further to do with the matter there?

A. No, sir; when Mr. Sheldon notified me that the engineer wouldn't go I had to get my engine out from behind the train again—that is, the switch-engine.

Q. Then what next did he do?

A. 420 was taken back to the engine-house. They called another crew.

Q. Were you there when the next crew was called?

A. No, sir; I went home; come down in the morning.

Q. Do you know when that train left on the track?

A. Yes, sir; that train left 5.40 the next morning—on Sunday morning.

Q. The train was ordered to leave at what time?

A. 5.30 in the afternoon.

Q. It was moved at what time the next day?

A. 5.40.

Q. In the usual course of business, about how long after call is made is the engine or train moved or started on its way?

A. We make a great effort to get trains out on the time they are ordered.

Q. When the call is made to the crew, is there a time designated when they shall report?

A. We always give the round-house two hours and 30 minutes unless something unusual happens.

Q. You mean by that you give two hours and 30 minutes in advance of leaving time?

A. Yes, sir; unless something unusual happens; then the order is made as soon as possible—that is, in case of a wreck or something unusual.

Q. Do you know what these seven cars were—what they were loaded with?

61 A. They were loaded with coal.

Q. Do you know how they were marked?

A. The cars was marked Alexis.

Cross-examination by Mr. SOUTHARD:

Q. Who was it that got on Mr. Clark's train, did you say, or his engine?

A. Mr. Horgan and Mr. Moore.

Q. Mr. Horgan and Mr. Moore both got on Mr. Clark's engine?

A. Yes, sir.

Q. Did you have any conversation with Mr. Clark at that time?

A. No, sir. I don't think he had—anything that I could hear. Mr. Clark made some remark, but I was too far off to hear what it was.

Q. You didn't hear anything that was said between Mr. Clark, Mr. Horgan, and Mr. Moore?

A. No, sir.

Q. Who made up that train, do you know, that night?

A. Do you mean what pony conductor?

Q. Yes.

A. Adam Balsmeyer.

Q. Who ordered its making up, did you?

A. Yes, sir.

Q. You gave all instructions as to its make-up?

A. Yes, sir.

Q. And to putting in those Alexis cars?

A. Yes, sir; I gave that order.

Q. When did they arrive there?

A. That would be pretty hard to tell.

Q. You don't know when they did arrive in the yard?

A. No, sir; I couldn't tell unless we would look it up, the exact date, the way they did arrive.

Q. Do you have entire charge of the making up of trains or are you under somebody's instructions?

A. I am under Mr. Moore.

Q. How is that?

A. I am under the general yard master, Mr. Moore.

Q. And the train was made up under his instructions?

A. The train was made up under instructions that I had.

Q. From him?

A. Through him. The general yard masters gets their instructions from their superintendent or through them.

(Adjourned to to-morrow morning at 9 o'clock.)

62 WEDNESDAY, *Mar.* 22—9 a. m.

O. R. MOSIER, first being duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. What is your relation to the Lake Shore Railway Company?

A. I have charge of the round-house at night.

Q. What is called foreman of the round-house?

A. Yes, sir.

Q. How long have you been in the service of the company?

A. Fourteen years.

Q. How long have you been in the service of the company at Air Line Junction—about?

A. Well, about eight.

Q. And in the service as having charge of the round-house at night, how long have you been in that service?

A. Three years.

Q. Were you in the performance of that service during the night of the 17th of March?

A. Yes, sir.

Q. What time did you enter upon the performance of your service there?

A. At 5.30 p. m.

Q. Standard time?

A. Yes, sir.

Q. Where were your duties performed?

A. In the round-house and in the office.

Q. The round-house is the place where the engines are stored?

A. Yes, sir.

Q. And your office is in the same building?

A. Yes, sir.

Q. And immediately connected with the round-house proper or the engine-house proper?

A. Yes, sir.

Q. The engineers and firemen who were called upon to perform service—that is, the engineers and firemen there in the service of the company—who were called upon to perform service, where do they first report when they are called?

A. When we call them they generally come to their engines.

Q. Whereabouts in the round-house is the bulletin-board, so called?

A. As they come into the round-house door, by the slate, where they first come in.

Q. Is that the place for ingress and egress for the engineers as they come to and go from the performance of their services?

A. Yes, sir.

Q. And this bulletin-board is how situated with reference to this door?

A. Why, it is nailed onto the wall.

Q. How is it located? How high up is it with reference to where a man would stand?

A. Oh, it is right in front of them when they go into the house—right at the right.

Q. With a notice posted on the bulletin-board and a man standing and looking at the board, where would it be located with reference to his face?

A. When he turns to go out into the house it is right in front of him. He can get just as near to it as he has a mind to.

Q. What, if anything, did you know of the order of the court and the notice from the company signed by Mr. Canniff calling
63 attention to the mandatory order of the court being posted upon the bulletin-board?

A. I learned that as soon as I came to work. It was posted when I came to work.

Q. You came to work at 5.30?

A. Yes, sir.

Q. In going to do your service did you pass through that same door?

A. No; not going to—soon after I came to work.

Q. Do you generally inspect the bulletin-board?

A. I generally do. They called my attention to it. I saw it within 25 minutes after I came to the round-house.

Q. How was it posted? Describe to the court where it was posted and how it was posted.

A. Why, it was nailed onto the bulletin-board the same as other orders are.

Q. What, if any, difficulty was there in a person who could read seeing it and reading it and determining its scope and extent and what it contained?

A. There should not be any.

Q. When did you last see that notice?

A. I couldn't say when I last saw it. It was there all night.

Q. Was it there the next day?

A. I was not at work there on the next day, but it was there in the morning when I went home.

Q. It was there that entire evening, was it?

A. Yes, sir.

Q. Were you on duty when Mr. Clark reported for service?

A. No, sir.

Q. Did you see Mr. Clark that evening?

A. Yes, sir.

Q. What time did you see him?

A. Well, I think it was between six and seven o'clock—some time after six.

Q. What Clark was that—Mr. Leonard Clark?

A. Yes, sir.

Q. Whereabouts did you see him?

A. He came into the office.

Q. What, if any, conversation took place between you and him with reference to his service?

A. He came into the office and turned up his book of rules and said that he had quit the service of the company.

Q. Do you know whether that was before or after he had entered upon the performance of his trip or service?

A. Well, it must have been after, for I didn't see him before.

Q. What, if any, further conversation did you have with Mr. Clark with reference to his quitting the service of the company?

A. I didn't have any conversation with him. He told me he had quit. It was unexpected to me, and he turned out of the office.

Q. Then what did you do?

A. I called another crew as soon as I could.

Q. Who reported?

A. J. B. Case and Kessler.

Q. J. B. Case was the engineer?
A. Yes, sir.
Q. And Kessler was the fireman?
A. Yes, sir.
Q. Now, upon arriving at the round-house—were you there when they came?
A. Yes, sir.
Q. Did you see them when they went out of your room?
A. Yes, sir.
64 Q. What door did they go out of when they passed into the round-house proper, where the engines were?
A. Why, there is only one door.
Q. The door that you have spoken of?
A. Yes, sir.
Q. Now, I wish you would go on and state, Mr. Mosier, what knowledge you have—your own knowledge—of what transpired with reference to their entering upon the performance of their service or quitting the service or any conversation you had with them. Go on and tell the court what transpired.
A. As soon as I found out that Clark was not going out at 4.20 I notified Mr. Bradeen to come to Air Line Junction at once, and if he couldn't to call me up by 'phone below, as I wanted to speak to him, and in a few minutes he called me up. He asked me about——
Q. I don't care about that. Perhaps it wouldn't be proper to state what transpired between you and Bradeen.
A. As soon as Mr. Clark wouldn't go we called the next crew to go out. Mr. Case came over and wanted to know why I called him at that time of day for a train leaving at 5.20. I told him to never mind, but to get out as soon as he could; that they were in a hurry for the engine. He went out to the engine and lit her up. In the meantime the fireman had gone away. They got her out in good shape and took the engine out into the yard.
Q. They got up and moved the engine out into the yard?
A. I didn't see them do it. In a little while the yard office called me up by 'phone and said that the crew that came out at 4.20—the second time—had quit, and to arrange for another crew as soon as possible. I waited a little while, until they would come back, to see what the trouble was, and Mr. Case came in and turned over his books.
Q. What, if any, conversation did you have with Mr. Case or the fireman with reference to resigning—how they came to quit?
A. I asked them the reason they quit, and Mr. Case told me that he was going to Hot Springs for his health. That is all he said, and the fireman didn't make any excuse.
Q. The fireman made no response?
A. No, sir. That is all that Mr. Case said to me. He said the next morning he would turn over his books; that he didn't have them that night—all of them.
Q. Then what did you do?
A. We called another crew—as was ordered—as soon as we could.

Q. Mr. Rutker and Mr. James?
A. Yes, sir.
Q. What time did they report?
A. I think about 10.30; I am not exact on the time.
Q. Did they take the same engine?
A. Yes; they took the engine out into the yard. First Mr. Rutker came to the office. He said he understood that there was some trouble in the yard, and he didn't want to go out at all, but Mr. Bradeen was there at that time and gave him the order of the court to read and asked him if he understood it, and he read that, and he said that he wouldn't haul Ann Arbor freight. He read this, and he said he would go out and he would come in a few minutes and let us know what he would do. Afterwards he took the engine and went out into the yard.
65 Q. That was Mr. Rutker?
A. Yes.
Q. Who was present when the printed order of the court was read to him?
A. Mr. Bradeen and myself.
Q. Was it read aloud?
A. No; he read it himself.
Q. Do you remember to what extent Mr. Bradeen read—do you remember now?
A. What?
Q. What was it that Mr. Bradeen read? Did he read the order?
A. He read it himself. Mr. Rutker read it himself.
Q. Where was Mr. Bradeen at that time?
A. Mr. Bradeen was sitting in the office at his desk.
Q. Did you see the printed order yourself?
A. Yes, sir.
Q. And you could identify it if you saw it?
A. Why, yes, sir.
Q. (Shows witness a paper.) Look at that paper and state to the court whether that is the same order that you saw or a copy of the same order.
A. Yes, sir; that is the same order.
Q. What did Mr. Rutker say, if anything, after he had read the order?
A. Well, he said that he would be in in a little while and let us know whether he went or not, and we told him to let us know as soon as he could for we were in a hurry to get the train out.
Q. Did I understand you to say that he had said that he wouldn't haul Ann Arbor freight?
A. Yes, sir.
Q. In whose presence was that said?
A. Mr. Bradeen's and myself.
Q. Then after you say he took the engine and went out into the yard?
A. Yes, sir.
Q. What transpired after that?
A. After they had been out there a short time I received orders

to get another crew for the engine. In a little while they came in and said that they had quit.

Q. Who?

A. The engineer and fireman.

Q. Rutker and James?

A. Yes, sir.

Q. Did you have any conversation with them after that in regard to it?

A. Why, we asked them why they had quit and they said no more about it after they came in.

Q. Did they make any respons- to your asking the reason of their quitting or resigning the service of the company?

A. No; I don't think they did after they came back.

Q. Who was the next called after they left?

A. We called Conley and Westgate.

Q. Conley for the engineer?

A. Yes, sir.

Q. And the fireman was Westgate?

A. Yes, sir.

Q. What time did they report?

A. Well, they came over in a short time afterwards; I guess it must have been a half an hour afterwards; not much more than that; possibly three-quarters of an hour.

Q. Did they come into the office?

A. The fireman did. I didn't see anything of Conley.

66 Q. Within your own knowledge, what transpired after that with reference to taking the engine out and taking it back?

A. Well, the superintendent made an arrangement to have him put his switch-engine that he had been running that day in onto the side track, and we called another man to relieve him and told him to go over there as soon as he could. The yard office called me up and told me to let them know when the engine came out of the yard. I waited a little while and then went out into the house, and the engine was got out onto the table then.

Q. The engine was in the control and possession at that time of whom?

A. Mr. Conley and James.

Q. What was done then?

A. Well, I didn't see anything more of Conley. He came to the office, but I was not in when he came back after he had quit the service.

Q. Did you have any conversation with Conley at that time?

A. I didn't see Mr. Conley then.

Cross-examination by Mr. SOUTHARD:

Q. What kind of a light did you have in the round-house at night?

A. Just a common, ordinary round-house light.

Q. They don't shine very brightly around the bulletin-board, do they?

A. Well, I don't know. I guess the lights are as good as they are anywhere there.

Q. They are not as near the bulletin-board as in some other places.

A. It is a daily reference. They can take their light and go and see it if they want to.

Q. Take their lantern?

A. Take a light; I don't know as a man could stand there without a light and see it—handy—possibly he could.

Q. You are not certain that a man could stand there without a light and read?

A. Well, I don't know as you could exactly stand there and read the whole notice without a light. I think a man could, possibly, if he would get close to it. It is a daily reference.

Q. Now, when Mr. Rutker came down there to the round-house, do you recollect just the order in which you made this statement that you have repeated?

A. Yes.

Q. Do you remember whether he said anything about Ann Arbor freight before he went out to the engine?

A. I do.

Q. Do you remember whether he said anything when he came back about it?

A. No; I don't remember.

Q. He got the engine where?

A. He took the engine in the round-house.

Q. And he was in the round-house when he made this first statement?

A. He was in the office.

Q. That is how far from the round-house?

A. The round-house and shop are two buildings. They are right close together. There is about ten or twelve feet between them.

Q. How long was it from the time that you heard him make that statement—that first statement that you heard him make—until you saw him with the engine?

A. Until he started with the engine—well, I couldn't say. It was not very long. He came in and read over his order and
67 staid there and talked a few minutes, and he said he would go out and let us know, and in a short time after that the engine went out.

Q. When did you first read that order?

A. Well, I read the order about 25 minutes after I came to work.

Q. What time did you go to work?

A. I went on duty at 5.30.

Q. When he read the order or at any time while you were there did you hear him make any statement as to his understanding of the contents of the order?

A. No; I don't know as he did. He read the order, and Mr. Bradeen asked him if he understood it, and he said he would go out and let us know in a little while.

Q. Do you remember his saying anything to the effect that he

understood it, but didn't see anything in it to prevent his quitting the service of the company?

A. No; I don't know as I heard him say that.

Q. When was it that you saw Mr. Bradeen as you state?

A. At the time Mr. Rutker came there for to go out on his train; before he went out of the house at all.

Q. Was that the only time you saw him with the order?

A. I didn't see any more orders after that.

Q. Was that the time that he asked him if he understood the order?

A. Yes.

Q. You are certain that was not when he came back with the engine?

A. I am.

Q. You didn't hear the fireman say anything one way nor the other?

A. No, sir; the fireman said he had quit. That was all.

Q. You didn't hear him say anything about refusing to take any freight—Ann Arbor or other freight?

A. No, sir.

Q. You didn't hear him give any reason for quitting the service?

A. No; he didn't say anything about it at all.

Q. Do you remember about what time Mr. Clark quit?

A. Well, it was between six and seven o'clock. I came there on duty at 5.30, and it was somewhere between six and seven o'clock; soon after six.

68 J. F. MOORE, first being duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. You are in the service of the Lake Shore & Michigan Southern Railway Company?

A. Yes, sir.

Q. At Air Line Junction?

A. In the yard.

Q. Acting general yard master?

A. Yes, sir.

Q. How long have you been in the performance of that service?

A. Since the first of March, this year.

Q. How long have you been in the service of the company all together?

A. Nine years.

Q. Do you reside in Toledo?

A. Yes, sir.

Q. In the performance of your service as acting general yard master what are your duties, briefly and concisely?

A. My duty is to see that all trains are made up and leave on the time ordered and to see that our yardmen carry out the orders made by the superintendent.

Q. You were in the service of the company, then, on the 17th of March last?

A. Yes, sir.

Q. What time did you go to work that day—what time of the day?

A. At five o'clock in the morning.

Q. And your duties ceased when, in the ordinary course of business, usually?

A. At one o'clock on the 18th.

Q. You say your service began at what time?

A. Five o'clock Saturday morning I went to work.

Q. And your duty was to see to the making up of the trains and see that they were dispatched on their way?

A. Yes, sir.

Q. I wish you would go on and state what transpired on the afternoon and evening of March the 17th with reference to the moving of freight train extra, engine No. 420, which had been made up in the yard for Detroit—go on and state all that you know of your own knowledge what transpired.

A. It was ordered for 5.30 or 5.40—I don't just remember—p. m. Conductor Albright was ordered for the run and Engineer Clark. About 5.30, I think it was, engine 420 backed out from the roundhouse and stood between the water-spout and the overhead bridge waiting for us to get the train made up. Mr. Clark then was standing upon the ground, off his engine. One of our yard engines, 370, had hold of seven cars, Ann Arbor freight, with some more freight ahead of it, and they could hardly move the cars. So I got engine 70 and coupled onto engine 370 to help them up with the other cars. At that time Mr. Clark came over to me and wanted to know if I was going to put the Alexis cars on his train. I made no reply. He says, "You know that if you put those cars in that train I can't pull them." I told him as to that I didn't know anything about it; that I would have to do my duty and back
69 him out into the yard and onto the train, and then he could do as he chose. So both of those engines backed those cars in onto No. 1 onto Mr. Albright's train, the train that Mr. Clark was to get.

Q. Were those cars backed up onto the head end of the train while Mr. Clark was there?

A. Yes, sir.

Q. How close did those Alexis cars pass by him?

A. They came within three feet.

Q. At that time was it light enough so that they could be seen?

A. Yes, sir.

Q. Well, they were put onto the head end of the train and coupled up?

A. Yes, sir.

Q. Go on.

A. I gave Mr. Clark the signal after we got the cars put onto his train. I gave the signal to back up, and he backed up down over the puzzle switches and backed down into No. 1 and backed down within about a car-length or two of his train and stopped. Myself and Mr. Horgan went down there, got his conductor, and when

we got down there he was getting his clothes out of his box on the engine, and I asked him to back up, and in reply he said, "I have quit." Then Mr. Horgan stepped up to him and held out the order of the court issued by Judge Ricks, with Mr. Canniff's notice attached, and asked him if he had seen the order, and he said he had, and he said, "I have quit," and he got off the engine and then went to the round-house.

Q. Did you have any further conversation with him?

A. Yes, sir.

Q. What did he say as to any reason why he quit the service of the company?

A. No, sir; nothing in regard to that. I received a message later—Johnson to Clark. I delivered the message to him and told him Mr. Johnson would like an answer to it. He made no reply. He put it in his pocket. I went up and called Mr. Johnson up and phoned him that Mr. Clark made no reply. He told me to tell Mr. Clark that he would like an answer to his message. So I went out and told Mr. Clark, and he said, "I am through with you and Mr. Johnson."

Q. Can you state what that message was?

A. No, sir.

Q. Was the message delivered to Mr. Clark?

A. Yes, sir.

Q. Did you have any conversation with Mr. Clark at that time?

A. No, sir.

Q. Did you have any conversation with the fireman?

A. No, sir.

Q. What next transpired after that, within your knowledge; what became of the engine?

A. The engine was taken to the house by the hostler.

Q. What next transpired?

A. About 10.30, I think it was—it was between ten and eleven o'clock—I received orders that engine 420 would go out with Engineer Rutker, and Mr. Stanton and Mr. Sheldon and Mr. Horgan and Mr. Bradeen and myself were in my office. So we went over towards the round-house, and when engine 420 backed up we all got onto the engine.

Q. Who was upon the engine when you got upon it?

A. Mr. Rutker and his fireman.

70 Q. What was his fireman's name?

A. I don't just remember his name.

Q. The engine stopped when you got onto it?

A. The engine stopped at the switch coming out of the round-house.

Q. Then you gentlemen got onto the engine?

A. Yes, sir.

Q. Now, state what, if anything, transpired at that time or subsequently.

A. Mr. Rutker turned around and saw Mr. Sheldon, and he says, "I don't know as you have any right upon this engine." I didn't hear as Mr. Sheldon made any reply to it.

Q. Mr. Sheldon was the assistant division superintendent?

A. Yes, sir; Mr. Rutker backed his engine down over the puzzles and headed up and backed in onto the train and Mr. Albright's brakeman coupled the train on.

Q. You say that Rutker backed the engine then down onto the train?

A. Yes; and Mr. Rutker's brakeman coupled the engine onto the train.

Q. Did any conversation transpire before the coupling up onto the train?

A. No, sir; after they coupled onto the train Albright got onto the engine and handed Mr. Rutker a clearance card. Mr. Rutker asked him if he had a through train. Mr. Albright said he had seven cars for Alexis. Mr. Rutker says, "I quit." Mr. Sheldon then asked Mr. Rutker what he quit for. He said for the same reason that all the rest had, and he says, "What reason is that?" and he says, "Because I won't pull Ann Arbor freight." He says, "You have got me in for it now and I quit."

Q. What, if anything, was said at that time with reference to if he would haul the train if the Ann Arbor cars were switched out of the train?

A. Mr. Sheldon was talking to him, but I couldn't understand the reply that he made or what Mr. Sheldon was saying to him.

Q. What, if anything, further took place, or what, if any, order of the court was shown or exhibited to him?

A. Yes; Mr. Sheldon asked him if he had seen the order.

Q. What did he say?

A. And he said he had.

Q. Did you have any conversation with the fireman?

A. No, sir.

Q. Speaking of Ann Arbor freight, what was among railroad men understood by that?

A. Alexis cars.

Q. Cars for delivery to what road?

A. The Toledo, Ann Arbor and North Michigan.

Q. Did you see these cars yourself?

A. Yes, sir.

Q. How many were there of them?

A. Seven.

Q. Laden with what?

A. With coal.

Q. And where placed upon the train—ahead or rear?

A. Placed upon the head end of the train upon #1 in the coal yard.

Q. When was that train finally moved on its way?

A. It was moved on the morning of the 18th about six o'clock, I should think; I was just going into the yard as the train was coming out.

71 Cross-examination by Mr. SOUTHARD:

Q. Did anybody get onto Mr. Clark's engine while he was upon it?
A. No, sir.
Q. Who asked Mr. Clark if he had seen the order?
A. Mr. Horgan.
Q. Where was it?
A. Mr. Horgan stood right alongside of his engine.
Q. How long was it after he had quit the service of the company?
A. I don't remember.
Q. About how long?
A. Well, I can't say just how long.
Q. Can't you give some idea of how long it was—ten minutes, or twenty minutes, or half an hour, more or less?
A. No, sir.
Q. You can't do it?

Mr. POTTER:

Q. Was this before he said he quit the service or after he said he would quit the service that this order was exhibited to him?
A. After.

Mr. SOUTHARD:

Q. I didn't understand you to say that at that time any order was shown to him; I understood you to say that Mr. Horgan asked him if he had seen the order?
A. Yes, sir; and he was holding the order in his hand.

The COURT:

Q. Mr. Horgan held out the order of the court?
A. Yes, sir.

Mr. SOUTHARD:

Q. How far was he standing from him?
A. Mr. Clark stood upon his engine and Mr. Horgan stood just below him on the ground and held the order up—in that way.
Q. And asked him whether he saw that?
A. Yes, sir.

Mr. POTTER:

Q. Asked him whether he had seen it?

The COURT: Horgan held out the order of the court and asked him if he had seen the order, and he said he had, and then said, "I quit," is the way I have it.

Mr. SOUTHARD:

Q. Who else was there at that time?
A. Mr. Albright and myself.
Q. Is that all?
A. Some parties were standing around—I didn't take particular notice.

Q. Horgan was there?
A. Yes.
Q. Was Sheldon or Bradeen or Stanton there?
A. No, sir.
Q. Were they there at any time while you were present with Mr. Clark?
A. No, sir.
Q. You were not there at all, I believe, when Mr. Case was there?
A. No, sir.
Q. You didn't see him?
A. No, sir.
Q. What did you all get up on Mr. Rutker's engine for?
A. I got on Mr. Rutker's engine to see whether he would take the train or not.
Q. Oh! he had said to you something about not taking the train while he was in the office?
A. No, sir.
72 Q. Had you heard him say anything about not taking the train?
A. Yes, sir.
Q. Where was that?
A. That was after he backed out his engine onto the train.
Q. After he backed up to the train with his engine?
A. Yes, sir.
Q. How did you all happen to be together there—Shelden, Bradeen, Horgan, yourself, and, perhaps, others?
A. Sir?
Q. How did you all happen to be together there at that time and place?
A. Because we wanted to see whether they would pull the freight or not, so that we would be able to order other crews out.
Q. It took all of those men to see whether a man went out; wasn't there some other reason?
A. No, sir; not that I know of.
Q. It was your duty to be there, wasn't it?
A. Yes.
Q. And also the duty of each of the oth-rs named?
A. As far as I know.
Q. Was it customary that they all attend to that duty at one time?
A. I couldn't say.
Q. Now, what time did Mr. Clark quit the service of the company and what time did he leave the grounds of the company, so far as you know, or that part of the grounds of the company?
A. Well, at the time that Mr. Clark said that he would quit it was between 5.30 and six o'clock, as near as I can remember.
Q. When did he leave?
A. I don't know.
Q. You didn't see Mr. Conley?
A. No, sir.

Q. I understood you to say you didn't hear the fireman say anything at all?
A. No, sir.
Q. Except to say that he had quit the service of the company?
A. I didn't hear that.
Q. You didn't hear that?
A. No, sir.

J. R. HORGAN, being first duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. You reside in Toledo?
A. Yes, sir.
Q. How long have you lived here?
A. Twelve years.
Q. You were in the service of the Lake Shore and Michigan Southern Railway Company up to the 17th of March last?
A. Yes, sir.
Q. And in what capacity?
A. Assistant train master on the Michigan division.
Q. Did your duties call you to Air Line Junction?
A. Yes, sir.
Q. Were you at Air Line Junction on the evening and night of the 17th?
A. Yes, sir.
Q. Up to what time on the morning of the 18th?
A. To six o'clock.
Q. How long have you been in the service of the company?
A. Twenty years.
Q. I wish you would go on and state to the court what transpired within your own knowledge in relation to the movement of
73 the extra freight to Detroit—engine 420. Go on in your own way and detail to the court briefly and concisely what transpired, what you saw, and what was done.
A. At about 5 o'clock the yard master notified me that there was a train going out for Detroit, ordered for 5.30, and about 5.20 the yard master came into the office and told me that he understood that Mr. Clark would not take that train out.
Q. I don't care about your stating what transpired between you and them; please leave that out and come right to the performance of the particular service—what you know with reference to the backing down of the engine, who had charge of it, and what was said and what was done.
A. This engine backed down to the train—within about one car-length of the train—and stopped.
Q. Who was in charge of it?
A. Albright was conductor, and Engineer Clark.
Q. Who was the fireman?
A. Thompson.
Q. State what there was after the engineer and fireman backed down with the engine to the train.

notice.

A. It stopped wi-hin about one car-length of the train, and I heard Mr. Clark say that he had quit; he st-pped to the box and took out his clothes and lunch bucket and stepped to the gangway. I asked him if he had seen Mr. Canniff's order and also the order of the court. Mr. Clark said yes; that he had seen it at the round-house and read it and understood it and he had quit.

Q. What did he do then?

A. He left the engine and went to the round-house.

Q. What, if anyt-ing, did he say as to the reason why he quit?

A. He didn't give any reason; I didn't ask him.

Q. Did the fireman accompany him?

A. I didn't see the fireman go with Mr. Clark to the round-house.

Q. The engineer, Clark, left his engine and went towards the round-house?

A. Yes, sir.

Q. How did the engine get back to the round-house?

A. I went back to the office and I understood that the hostler took the engine back.

Q. When did you first notice or know of the posting on the bulletin-board of Mr. Canniff's notice to the employés and of the order issued by Judge Ricks in this matter?

A. About 4.20 that afternoon.

Q. Was it posted in a place where it was light, where it could be seen? Was there any difficulty in seeing it?

A. No, sir; it was posted on the boards and was where everybody could see it; at the round-house, I couldn't say as to that. I went over there to see if they had one, and they told me that they had, and that it was on the board.

Q. In the posting of these notices, where is the usual place to post them?

A. They have bulletin-boards in the conductors' room and at the round-house.

Q. The printed notices of the order served by the United States marshal, were any of those distributed at the Air Line Junction that afternoon of the 17th?

A. Yes, sir.

74 Q. What transpired next, within your knowledge, with reference to the movement or the attempted movement of the train?

A. We ordered another crew for that same engine and train, and between 7 and 8 o'clock Mr. Case, the engineman, and Mr. Cressler, the fireman, —. The first I seen of them was when they were backing out onto the train. They backed out and down to the train and coupled up. Mr. Albright got onto the engine and gave Mr. Case the clearance card. Mr. Case asked how many cars he had. He told him "48." He wanted to know if he had any Alexis cars, and he told him he had seven, and Mr. Case said he would quit. Mr. Sheldon asked him if he had read the order of the court and understood it, and he said he had. Mr. Sheldon then read it to him and asked how he felt about it, and he said he would quit; he would

take his engine back to the round-house if it would accommodate him.

Q. What, if anything, was said about his hauling the train if the seven Alexis cars were switched out?

A. I don't think there was anything said to Mr. Case.

Q. What next transpired after that?

A. They called another crew; Mr. Rutker and Fireman James were called. The first I saw of them was when they were backing down to the train. They backed down and coupled onto the train. The conductor got onto the engine and he asked how many cars he had. They told him 48, and he wanted to know if he had any Alexis cars, and we told him that he had, and the conductor said that he would quit. Mr. Rutker said that he would quit; that he had resigned.

Q. Who was present when he said that?

A. Mr. Sheldon and Mr. Stanton and Mr. Bradeen and Mr. Moore.

Q. Where was it that he said that?

A. On his engine.

Q. Was the question asked him or did he state what his reason was for quitting?

A. Yes, sir; that he quit for the same reason that the other men ahead of him had—because he didn't want to handle Ann Arbor cars.

Q. What was done with the engine then—taken back to the round-house again?

A. Yes, sir; Mr. Rutker took the engine back to the round-house.

Q. Did you have any conversation with the fireman?

A. The fireman was asked how he felt in regard to it and he said the same as the engineman.

Q. What, if anything, was said to Mr. Rutker or to the fireman with reference to their performing the service if these seven cars were switched out?

A. Mr. Sheldon asked if he would take the train out if the seven Ann Arbor cars were switched out, and he said he would.

Q. What transpired next, within your knowledge, with reference to the attempted movement?

A. They called another crew—Mr. Conley and Mr. Westgate. They backed out down onto the train and coupled up.

Q. With the same engine?

A. Yes, sir.

Q. And they were in charge of the engine?

A. Yes, sir.

Q. They moved the engine down onto the train. It was coupled up onto the train, was it?

A. Yes, sir, and they were waiting for another conductor—
75 waiting for him to come down from the office—and Mr. Sheldon and Bradeen and myself stood by the engine and heard Mr. Conley say he would quit. I didn't hear what he asked the conductor.

Q. Was that remark made to the conductor after the conductor had come?

A. Yes, sir.

Q. Did you hear what transpired between the conductor and Conley?

A. No, sir.

Q. What, if anything, do you know about Mr. Conley's having notice of the fact that there were Ann Arbor or Alexis cars in the train?

A. I don't know how he came to know or if he knew that they were in the train.

Q. Did you have any conversation with him or hear any statement made by him with reference to the reason why he quit the service of the company?

A. We got onto the engine, then, after we heard this, and Mr. Sheldon asked him why he quit, and he said because there were Alexis cars in the train. Mr. Sheldon asked him if he had read the order of the court, and he said he had. Mr. Sheldon then read it to him, and he told him that he would quit.

Q. What, if anything, was said at or about that time to him with reference to the order and the hauling of the train if the seven Alexis cars were switched out?

A. Mr. Sheldon asked him if he would take the train if they would switch out the Alexis cars, and he said he would, and the fireman said he would go with the train—with the engine.

Q. That was Mr. Westgate?

A. Yes, sir.

Q. What services do you remember of the engineer's performing about the engine—that is, Mr. Conley, about the engine—while he was coupling up to the train?

A. Before the conductor got there he got down off from his engine and oiled the engine; got down on the right-hand side and oiled around and got up on the left-hand side.

Q. Next to the tender of the engine were what cars?

A. A car of coal next to the engine.

Q. Was that one of the seven Alexis cars?

A. I understood it was. The seven Alexis cars were ahead.

Q. Do you know whether the engineer examined or looked to see as to the cars?

A. I couldn't say as to that. He was on the train when I got on.

Q. What was the conductor's name that had charge of the train, do you remember?

A. No; I don't.

Cross-examination by Mr. SOUTHARD:

Q. You said that Mr. Clark said something to—who was it—Mr. Bradeen? Who was it that Mr. Clark spoke to with reference to having seen this order?

A. Yes, sir.

Q. Who were there at that time?

A. Mr. Moore and Mr. Albright.

Q. Where were you standing when you asked him if he had seen the order?

A. Mr. Clark was standing in the gangway of the engine and I was standing on the ground.

76 Q. Clark in the engine; how far from you was Moore?

A. Right close to me.

Q. How far from you was Mr. Albright?

A. Mr. Albright stood close by; we were all three close together.

Q. They had, so far as distance was concerned, as good an opportunity to hear as you?

A. Yes, sir.

Q. You understood him to say that he had read it on the bulletin-board?

A. That he had seen it in the round-house and had read it and understood it.

Q. That he had seen it at the round-house and had read it and understood it?

A. Yes, sir.

Q. You are certain that Mr. Moore and Mr. Albright stood right there at that time?

A. Yes, sir.

Q. Was that before or after he had been given the clearance card?

A. I couldn't say whether he had been given the clearance card or not.

Q. Do you know how long before that time he had quit the service of the company?

A. Before I asked him about the order?

Q. Yes.

A. About one minute; he was in his engine and said he would quit, and then I asked him about the order.

Q. Do you know whether or not that was the first time that he said that he had quit the service of the company?

A. I don't know.

Q. That was the first time that you had heard him say it?

A. Yes, sir.

Q. Did I understand you to say that Mr. Clark did or did not say anything, so far as you heard, about hauling Ann Arbor freight?

A. I didn't hear Mr. Clark say anything about hauling Ann Arbor freight; no, sir.

HERMAN B. CHILLCOTE, first being duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. You reside in Toledo?

A. Yes, sir.

Q. How long have you lived here?

A. I have been here ever since last June.

Q. Were you in the service of the Lake Shore & Michigan Southern Railway Company on the 17th and 18th of March last?

A. Yes, sir.

Q. Whereabouts were you performing service for the company?

A. On the 17th I was not on duty until afternoon. I was ordered to Alexis.

Q. What time did you report at Alexis?

A. I should judge about 3.30; I had to walk most of the way there.

Q. 3.30 p. m. on the 17th?

A. Yes, sir; Friday afternoon.

Q. You remained there until what time?

A. About 4.30.

Q. That afternoon?

A. Yes, sir.

Q. When did you next perform service at Alexis?

A. I went out there the next morning and arrived between 8 and 8.30.

Q. And remained for what length of time?

A. Until 4.30 p. m. or thereabouts.

Q. On the morning of the 18th you arrived at Alexis about what time?

A. Between 8 and 8.30.

77 Q. Did you have with you printed copies of the order of this court?

A. They were in the station when I arrived that morning, at Alexis.

Q. How many copies of the orders were there there?

A. Oh, I should judge there was a dozen or fifteen. I didn't count them.

Q. Would you recognize the printed order if you saw it?

A. Yes, sir. I have one here. (Witness produces a paper.)

Q. The copies that you saw were identical with this, were they?

A. Yes, sir.

Q. Having the order printed with reference to the interstate-commerce act and the notice issued by Mr. Canniff?

A. Yes, sir.

Q. What time did the train come from the north—Detroit, Engineer Lennon; what time did that train arrive at Alexis?

A. At 10.07, about; that is the operator's time for it.

Q. What, if any, car or cars had been delivered by any road upon the track of the Lake Shore and Michigan Southern Railway Company at Alexis?

A. There were three cars standing there ready to be delivered to the Lake Shore.

Q. They were empty cars or loaded cars?

A. They were empty cars.

Q. Had been delivered onto the Lake Shore road from what road?

A. They were placed on the Ann Arbor "Y" of the Toledo, Ann Arbor & North Michigan Railroad Company.

Q. Is that the place of delivery by the Ann Arbor road to the Lake Shore at that place?

A. Yes, sir.

Q. That is the only connection that the companies have at that point, is it not?

A. Yes, sir.

Q. Three cars?

A. Yes, sir.

Q. Do you remember what cars they were?

A. C., L. & W. car 1020; and then there was 9003, Red line, and an F. & P. M. car; the number—I wouldn't attempt to give the number, but I think it was 6330.

Q. Those had been delivered by the Ann Arbor road upon the Lake Shore track at Alexis?

A. No, sir; they were on the Ann Arbor "Y."

Q. What is the custom and practice there for delivery? For instance, cars to be delivered by the Lake Shore to the Ann Arbor, where are those cars to be delivered?

A. The Ann Arbor place them on their siding, or "Y," and the Lake Shore switch out to them; and the Lake Shore place theirs on the same "Y." The "Y" is the connection of the two roads.

Q. Cars that are for delivery by the Lake Shore to the Ann Arbor road are placed where?

A. Upon the "Y" between the two roads, or the switch connecting the two roads.

Q. And cars for delivery by the Ann Arbor to the Lake Shore Company are placed where?

A. Upon the same place; are reached by the same track.

Q. Are there tracks designated there for the delivery of cars?

A. It has never been pointed out to me as such.

Q. These cars were to be delivered to the Lake Shore road?

A. Yes, sir.

78 Q. What, if anything, do you know about those cars being ordered to be taken by that train bound South from Detroit?

A. I saw the message to the conductor to pick up a car.

Q. Will you give us the name of the conductor?

A. Willitts, I believe. To pick up one car—9003, Red line—and pull to West Toledo, and I also saw the billing for the car.

Q. How soon after that—upon the arrival of that train did you see the conductor?

A. Shortly after; yes, sir.

Q. Did you see the engineer, Lennon?

A. Not until they pulled up across the Ann Arbor crossing.

Q. After the arrival of the train, then—describe the movements of the train at Alexis.

A. Well, the train arrived and stopped, as customary, perhaps a hundred feet before they reached the Ann Arbor crossing, and the semaphore was set for orders, and their brakeman came up to see what was to be done—whether there were orders or cars to go—and the operator or the agent there showed him what there was to go, and he read the message. He said he would wait until the conductor came up and let him take action.

Q. Perhaps it would be proper for you to state what was said, but now just describe the movements of the train.

A. Well, after the conductor came up——

Q. The brakeman came up?

A. Yes, but he did nothing with the orders. The conductor came up and, I think, swung the train ahead, and it pulled up across the Ann Arbor crossings and stopped opposite the telegraph office, and at that time I had left the office. I didn't know what transpired until I came back to the engine. The C., L. & W. car was a cripple, and I had it jacked up for the purpose of repairing it. After I saw what there was to go I went over to examine this crippled car to see if it was in a fit condition to do the switching necessary to get the car out and came back to the engine as it stood opposite to the station. I think at that time the conductor was inside of the engine. I was near the engine when he went in.

Q. State what transpired at that time.

A. There was some escaping steam about the engine, and I couldn't tell word for word what transpired upon the engine. I should judge——

Q. It is not proper for you to state what you should judge, but state what you heard.

A. I know, substantially, it was that the engineer, before he would take the car, he would quit his job there.

Q. What, if any, conversation did you have then with him?

A. I stepped up to the engine and handed him a copy of this order.

Q. With the notice attached to it signed by Mr. Canniff?

A. Yes, sir; I gave him one, and also the fireman.

Q. Duplicates of the order that you have produced in court?

A. Exactly like the one I have just handed you.

79 Q. What time of day was this?

A. About 10.15.

Q. In the morning?

A. Yes, sir.

Q. Just state what transpired between you and the engineer or fireman at that time, or both.

A. I handed him these papers and he said he had seen the order; that it was posted somewhere; I think at the round-house; I think at Detroit. I wouldn't say positive as to that, but he said he had seen a copy of it.

Q. Do you know whether the order had been posted at Detroit and at Monroe?

A. I don't know. There was nothing more transpired there. The engineer merely had nothing to say. He didn't talk then.

Q. What did he say when you asked him if he had seen the order?

A. I didn't ask him if he had seen it. I simply handed it to him and he said, "We understand the order" or "We have seen the order," or words to that effect. Then I went back into the telegraph office.

Q. Were the cars moved that morning?

A. No, sir.

Q. How long was the train kept at Alexis?

A. It departed at 3.18, I think.
Q. Was the car hauled afterwards—put into the main?
A. Yes, sir.

The COURT:

Q. This was in the morning at what time?
A. The operator reports the arrival of the train at 10.07, and the train departed at 3.15 or 3.18.

Mr. POTTER:

Q. What did that train consist of?
A. I couldn't say as to that.
Q. Generally?
A. Oh, it had, perhaps, 25 or 30 cars.
Q. Do you know whether they were sealed—loaded cars or empty?
A. I could not tell whether they were box cars or flat cars.
Q. Did you have any conversation at all with the fireman?
A. No, sir; nothing more than what would naturally occur. I had my work to do and I went on and done it.
Q. What did the engineer do? Did he remain upon his engine or leave it?
A. He remained upon the engine for awhile and then came into the office. Messages were sent back and forth. I guess he was in the office a couple of times.
Q. Where did the train stand in the meantime?
A. The engine at that time was standing right opposite the telegraph office until it was otherwise ordered.
Q. Upon the main track or the side track?
A. The main track.
Q. The south-bound main track?
A. There is only one.
Q. How long did it remain upon that track?
A. Now, I couldn't exactly state, but I think perhaps about 10.50 or 11 o'clock that the train got orders for some other train to pass it or meet it there or something.
Q. The train got orders to get out of the way for some other train?
A. Yes, sir.
80 Q. The train was then moved where?
A. It was backed up on the siding north of the Ann Arbor crossing.
Q. Who performed that service?
A. The engineer, I believe; I didn't watch.
Q. How long did the train remain there?
A. The train staid there until, perhaps 2.30, perhaps 2.45; it was very nearly 3 o'clock.
Q. Then, it finally departed?
A. Yes, sir; the engine was cut off and they came up to the telegraph office to avoid so much walking.
Q. Who brought the engine up to the telegraph office?

A. I couldn't say whether it was the engineer or the fireman.
Q. Did you see the engineer and fireman there on the engine?
A. Yes, sir.

The COURT:

Q. Do I understand that the train went on without the car?
A. No, sir.

Mr. POTTER:

Q. And that engineer and fireman finally brought the car, left out——
A. At 3.18, I think, was the recorded time.
Q. Did you see or know of messages to Alexis in reference to the raising of the so-called boycott? Did you know anything about or or see any messages? You understood that there was a boycott in force at that time, didn't you?
A. Yes, sir; there was a message.
Q. Have you a copy of it?
A. Yes, sir.
Q. Let us see it, please. Do you know when that message was received?
A. I do.
Q. What was the hour it was received?
A. The message will show. It was addressed to James Lennon, engineer of 416.
Q. Who was it signed by?
A. J. W. Watson.
Q. Read it, please.
A. "James Lennon, engineer, engine 416: You can come along and handle Ann Arbor cars. J. W. Watson, committee of adjustment." It is dated on the 18th and received at 2.30 p. m.
Q. Is that the date when it was sent?
A. Yes, sir; the 3d month and the 18th day, at 2.30 p. m.
Q. Signed by J. W. Watson?
A. Yes, sir.
Q. Do yon know what relation Mr. Watson bore to the Brotherhood of Locomotive Engineers?
A. Nothing more than what the prefix is under his name.
Q. Please read what is written under his name.
A. "G. com. of adjustment."
Q. Were there any other messages, if you know, passing between Mr. Watson and Mr. Lennon, the engineer?
A. No, sir; I know of no others.
Q. Were there any messages passing between the superintendent's office here to Mr. Lennon?
A. Yes, sir.
Q. Have you got copies of those messages and the answers?
A. I have got them all.
Q. I wish you would read the messages that were sent to Mr. Lennon and his answers, if there were any given.
A. The first one sent to Mr. Lennon was sent from Toledo on the

18th—March 18th—"To James Lennon, engineer, engine 416, Alexis."

81 Q. Give us the hour.

A. I can't state as to that. The original was delivered to the engineer and, by an error of the operator, he didn't keep a copy. This is a copy made, I believe, as near as he can from the original. I don't know as to the hour.

Q. Give us the substance.

A. "Will you bring your train to Air Line Junction if order to take the car from the Toledo, Ann Arbor & Northern Michigan is recalled? S. S. H."

Q. What is the next? Was there any answer to that?

A. Yes, sir.

Q. Give the answer.

A. "To S. S. H.: Toledo, March 18th. Yes; I will take my train to L. J. all right." L. J., I understand, *I understand* is the office called Air Line Junction—at 11.01 a. m.

Q. Signed what?

A. Signed Lennon.

Q. What was the next communication, if any?

A. The next message was—the time is not given on this one, but it was, I presume, about 11 o'clock. It is dated at Toledo.

Q. Addressed to whom?

A. To J. Lennon, engineer, engine 416. It reads this: "This company has been notified by the court that we must handle interchanged business with the T., A. A. & N. M. railway. The car you refused to take having been on regular course of business, I must insist on its being taken. Answer. (Signed) S. S. H."

Q. What was the answer?

A. There was no answer.

Q. What, if anything, do you know about its being delivered to Engineer Lennon?

A. I know that the conductor got it; he went out to the engine with it.

Q. What reply, if any, did the conductor make?

Mr. HURD: It don't make any difference, so far as this case is concerned, what reply the conductor made.

The COURT: Unless he was acting for the engineer.

Mr. HURD: Then you*y* must prove that.

Mr. POTTER: We will withdraw that at present.

Q. What, if any, further messages passed to or were sent to Engineer Lennon?

A. There wasn't any more to or from the engineer.

Q. Did you have any conversation with Mr. Lennon after that?

A. No, sir.

Q. Who were present when you delivered to the engineer and to the fireman copies of the printed order and the notice given by Mr. Canniff?

A. Mr. John Keogan.

Q. And what relation did he hold to the company?

A. He was head brakeman on the train in question.

Q. Mr. Lennon, the engineer, afterwards brought the train
82 with the Ann Arbor car down to Air Line Junction?

A. He left the yards with it; I suppose he did.

Q. That was after the receipt of Mr. Watson's message to him?

A. Yes, sir.

Cross-examination by Mr. SOUTHARD:

Q. You didn't hear distinctly the conversation between the conductor and Mr. Lennon when you came out to the engine after it had arrived?

A. No, sir; I didn't.

Q. Did you hear any of the conversation that first took place between Mr. Lennon and the conductor?

A. Not directly to the conductor, I don't think; no, sir.

Q. Do you know with whom his first conversation was after he had received the order?

A. No, I don't. I was out there with this crippled car.

Q. And when you did get there the escaping steam and noise made it impossible for you to hear distinctly?

A. Yes, sir.

Q. Did you hear Mr. Lennon say about that time that he would take the engine to Air Line Junction or any place else that was desired, or the train?

A. No, sir; I saw his message.

Q. I am talking now about the time that the train arrived at Alexis after he came over to the office where you were, and before either of these messages which you have described were received, did you hear him say anything what he would do with the engine and train if it was desired?

A. No; I can't say that I remember any conversation on that line.

Q. Now, the last message which you have described as a company message and Mr. Watson's message were received about the same time?

A. The one in reference, signed by Mr. Hand, in regard to the company's insisting on that car going?

Q. Yes.

A. And Mr. Watson's message?

Q. Yes.

A. I think they were a few minutes apart.

Q. Isn't it a fact that they were handed to Mr. Lennon, the engineer, at the same time?

A. I couldn't say—no, I don't think they were. I wouldn't attempt to say positively; no, sir.

Q. This was an empty car?

A. Yes, sir.

Q. Do you know where it was billed?

A. It was billed to West Toledo.

Q. Do you know what it was being taken down there for?

A. I do not.

Q. Did you hear him talk with anybody else except yourself and the conductor?

A. Why, the boys were all talking in the office.

Q. Was Lennon in the office about that time?

A. About what time?

Q. Near the time that he arrived?

A. He came into the office shortly after he received the order to take the car.

Q. Shortly after that?

A. Yes, sir.

Q. Now, that order that you handed to him was not the order that was upon the bulletin-board?

A. I didn't see the one on the bulletin-board.

Q. Did you see any upon the bulletin-board?

A. No, sir.

83 Q. I understood you to say that there was an order upon the bulletin-board?

A. I didn't say that; I said he stated that he had seen the order. He stated when I handed him this order, before he read it, that he understood it; that he had seen something of that kind.

Q. At Detroit?

A. No; I don't say positively that he said Detroit. I think he stated that he saw it on the bulletin-board somewhere—at the round-house in Detroit or Toledo.

Q. Do you know when he left Toledo to go north upon that train?

A. I don't know.

Q. He must have left some time the day before?

A. I don't know when he left.

Q. Do you know how far north he had been?

A. No, sir.

Q. Were you personally acquainted with Mr. Lennon?

A. I never saw him before, to my knowledge.

Q. The notice which you handed to him after his talking with the conductor, did it have anything attached to it—was it signed by any officer or officers of the company?

A. It did.

Q. Where did you get that notice?

A. It was furnished—the nightman in charge of the yard there—by the officials of the road, and my attention was called to their being there on the morning of the 18th when I arrived at my work.

Q. During the time that he was there did you hear him say anything about what he was willing to do with the train or engine before the receipt of the message asking him if he would bring his train to Air Line Junction if the order to take the Ann Arbor car was recalled?

A. I don't remember any conversation to that effect.

Q. Did you hear him say that at any time during that day while he was there?

A. No; I don't think—until after the message was received.

JOHN T. KEEGAN, first being duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. Where do you live?
A. Monroe.
Q. How long have you lived there?
A. I have lived there about twenty years.
Q. Are you in the service of the Lake Shore & Michigan Southern Railway Company?
A. I am.
Q. How long have you been in its service?
A. Since last September.
Q. In the performance of what service?
A. Brakeman.
Q. Were you one of the brakemen on Conductor Willitts' train—Engineer Lennon, bound south from Detroit—on the morning of the 18th of March last?
A. I was.
Q. What position did you occupy?
A. I was head brakeman.
84 Q. Whereabouts did Mr. Lennon take the train, at Detroit or Monroe? Where did he enter upon the performance of his services?
A. At Air Line Junction.
Q. Going south?
A. Oh, at Monroe.
Q. What time did you leave Monroe, going south, on the morning of the 18th?
A. About 9.30; I don't know exactly; it was after the passenger train.
Q. And you got to Alexis at what time?
A. Oh, we got there about ten o'clock; it was, I guess, about 9 o'clock when we left Monroe.
Q. How many cars had you?
A. Forty-five.
Q. When you arrived at Alexis your train stopped?
A. Yes, sir.
Q. And remained from that time to about what time?
A. Until about three o'clock.
Q. In the afternoon?
A. Yes, sir.
Q. I will ask you to state to the court whether you were present in the cab of the engine when Mr. Chillcott delivered to the engineer, Lennon, and to the fireman in the engine a copy of the order or printed circular or notice.
A. I was.
Q. Did you see the order yourself and read it?
A. I did; I read a part of it; I didn't read it all.
Q. Look at that paper (hands witness paper) and state to the court if that is a copy of that notice and order.
A. Yes, sir; that is one of the same.

Q. Was there attached to it a notice, signed by Mr. Canniff, to the employés?

A. Yes, sir.

Q. What time was it in the day that the notice and order was served on you?

A. Oh, it was about ten or fifteen—we got there about ten o'clock—it was about ten or fifteen minutes after we got there. The conductor had to walk up from the rear end and deliver his message.

Q. You saw Mr. Chillcott there?

A. Yes, sir.

Q. Did you get into the cab with him?

A. Yes; I followed him right in; the engineer took his order and said, "I have seen that before;" the fireman took his and began to read it; I stood looking over his shoulder reading it.

Q. What further, if anything, was said by Mr. Lennon, the engineer?

A. Mr. Lennon got off from the engine and went into the office and Mr. Chillcott went into the office and the fireman and I staid in the engine.

Q. What, if any, conversation did you have with the fireman in reference to the order?

A. He was there reading the order and had read it part way and I got off the engine and went into the office.

Q. What, if anything, was said in the office?

A. When I went into the office the operator was working; of course, everything was quiet; the operator was sending some message; I don't know what the message was.

Q. What, if any, conversation did you have with Mr. Lennon?

A. I didn't have any conversation with Mr. Lennon.

85 Q. What, if anything, did you hear him say with reference to any reasons?

A. I heard him say that he would quit.

Q. Did he say why he would quit—what his reasons were for quitting?

A. No; he said that he would quit. I think the words he used was that he would quit in preference to hauling the cars. I am not positive.

Q. What cars?

A. The cars that we had the order to pick up.

Q. Did you afterwards see him do anything in reference to the train?

A. Yes, sir; we had to back in on the siding to get out of the way of passenger train No. 104.

Q. Did you see the fireman on the engine after that?

A. Yes, sir.

Q. When the engine was moved who moved it?

A. The engineer.

Q. Do you know anything about the delivery of telegraph messages to Mr. Lennon?

A. When we was in the siding, after # 104 passed, the conductor swung us ahead and he came up. The conductor had a message

that he delivered to Mr. Lennon—something about—I heard him say, "Of course, I will take it in; of c-urse, I will." Mr. Lennon said that. Afterwards there was a message to take the train to Air Line Junction if some order was received.

Q. Do you know of any other messages being sent or delivered after that to Mr. Lennon, or, in other words, being sent by him?

A. No, sir; only I heard some order—I don't know exactly how it was worded—that he could haul T. & A. cars. That was after we pulled out of the siding.

Q. Was that the telegram signed by Watson?

A. I don't know who it was signed by.

Q. That was received before he pulled the train out?

A. Yes, sir.

Q. How long before he pulled the train out and took this car?

A. We was back in the caboose. We staid around until about half past one or two o'clock, so I went back to the caboose after lunch. In the meantime they got that message while I was back there.

Q. Do you know of your own personal knowledge when the message was sent by Watson and delivered to Lennon?

A. No, sir; I don't know anything about that.

Q. After this message which you spoke of being received—the last message to haul the car—was the car then in the train?

A. The car was.

Q. And hauled?

A. We took two cars—we hauled one to West Toledo and took one in.

Q. And who had charge of the engine?

A. Mr. Lennon.

Q. The fireman was the same?

A. Yes, sir.

Q. And ran through to Toledo?

A. Through to Air Line.

The COURT:

Q. Were both of those cars Ann Arbor cars?

A. They were both taken from the Ann Arbor.

Cross-examination by Mr. SOUTHARD:

Q. Was the order to take two cars?

86 A. They got an order afterwards. The first order was to take one. There was a crippled car there, but it had got repaired in the meantime.

Q. When you heard Mr. Lennon say he would quit where was he?

A. He was on the engine.

Q. How soon after he brought the engine up to the office?

A. The conductor wal-ed up from the rear end and got the message and came out and said, "We have got a car to pick up." Mr. Lennon says, "I will quit; I will quit in preference to taking it," or something similar to that.

Q. How many times did you hear him repeat, if at all, that he had quit and left the service of the company?

A. He said that he would quit, and that was all.

Q. Did you hear him afterwards repeat that he had quit?

A. I heard him repeat in the office that he had quit.

Q. Did you hear him say anything about refusing or not refusing Ann Arbor cars?

A. I didn't.

Q. Except the remark that he made here, that he would quit in preference to taking that car?

A. Yes, sir.

S. S. HAND, first being duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. You are the division superintendent of the Lake Shore?

A. Of the Detroit division.

Q. Your headquarters are at Detroit?

A. Yes, sir.

Q. How long have you been in the service of the company?

A. 27 years.

Q. How long have you performed the service that you are now engaged in?

A. Five years and three months.

Q. As division superintendent of the Detroit division you have direct charge of the management of the freight and passenger trains running between Detroit and Toledo over the Lake Shore tracks?

A. Yes, sir.

Q. Who has the control, management, and direction of the trainmen—engineers, firemen, &c.?

A. I do.

Q. Are you acquainted with James Lennon?

A. Yes, sir.

Q. What service was he performing at that time?

A. Engineer's service.

Q. Did you have any telegraphic communication with Mr. Lennon on the morning of the 18th of March last?

A. Yes, sir.

Q. I wish you would refer to them and identify the first message sent to him (hands witness papers), and what, if any, answers or responses were made.

A. The first message was a message—was to the conductor of extra 416, south—to take a car from Alexis south.

Q. That was sent when?

A. At 9.30 a. m., the 18th.

Q. What was the next message sent—to Conductor Willitts, was it?

A. No, sir; this was sent by me.

Q. By you to Conductor Willitts?

A. Yes, sir.

87 Q. He was the conductor of the train of which Lennon was the engineer.

A. Yes, sir; the next message received was by my train master, G. W. Johnson, at Detroit—from the conductor—reading as follows: "Jim Lennon says he will quit before he takes the car. (Signed) Willitts." The date of that message was 10.27, 18th.

Q. Where was that message sent from?

A. Alexis.

Q. What was the next message—in time?

A. The next message was directed to me by Mr. Chillcott—H. B. Chillcott.

Q. We will pass that.

A. The next message is to Mr. Lennon by me, dated Toledo, 18th, 10.40 a. m.: "I am advised by Conductor Willitts that you refuse to take an empty car from T., A. A. & N. M. R'y for this company. On what ground do you refuse to handle this car? Will you bring your train to Air Line Junction if the order to take the empty car is rescinded? (Signed) S. S. H."

Q. That was your message to Lennon?

A. Yes, sir.

Q. What, if any, answer did you get from Mr. Lennon?

A. Mr. Lennon to me. This is dated the 18th, at 11.07 a. m.: "Yes; I will take my train to Air Line Junction all right. Lennon."

Mr. HURD:

Q. Is that signed by Lennon?

A. As it appears from this.

Q. That is a copy of the message delivered to you?

A. Yes, sir; it is a copy written by the operator at the Toledo office. It was directed to me at Toledo. I was at Toledo.

Q. That is the operator here?

A. Yes, sir.

Mr. HURD: That may go in, but we insist it is not competent evidence.

Mr. POTTER:

Q. That was received by you in response to a telegram which you had just received from Lennon?

A. Yes, sir.

Q. It was addressed to him at Alexis?

A. Yes, sir.

Q. And the reply sent from Alexis?

A. Yes, sir.

Q. What is the date and the hour of his reply?

A. That is 11.07.

Q. Your message to him was 10.40?

A. Yes, sir.

Q. What message next was sent by you and what, if any, reply by him?

A. The next message was sent to him by me at 11.39, 18th; "J. Lennon, engineer 416, Alexis: This company has been notified by the court that we must handle interchanges business with the Toledo, Ann Arbor & North Michigan railroad. The car you refused to take having been offered to us in the regular course of business, I must insist on its being taken. Answer."

Q. What was the hour of that?

A. 11.39.

Q. What, if any, answer did you get to that?

A. It was not answered by Mr. Lennon. The answer to it was dated at Alexis, on the 18th, 11.30: "S. S. H.: Engineer Lennon says you have his message about taking the train to Air Line
88 Junction, and says he does not refuse to pull the car, but says he will quit before — will take it. He refuses to answer your last message. (Signed) H. B. C." It is intended for Chillcott, our agent there at the time.

Q. Have you any further messages?

A. Well, I have a message here, dated at 2.20 p. m., from J. W. Watson to James Lennon.

Q. Do you know what hour that message was sent out?

A. The date of the message shows 2.20 p. m.

Q. And was received at Alexis at what time?

A. On the 18th, at 2.20 p. m.

Mr. POTTER (to opposite counsel): You don't dispute the fact that the Lake Shore & Michigan Southern Railway Company is transacting interstate business and is run through the States of Ohio, Indiana, Michigan, and Illinois?

Mr. HURD: We admit that.

Mr. POTTER: Do you desire us to make proof that the Toledo, Ann Arbor and North Michigan railroad runs through Ohio into Michigan and connects with the Lake Shore & Michigan South-rn?

Mr. HURD: We will admit that.

WILLITTS, first being duly sworn, testified as follows:

Direct examination by Mr. GREENE:

Q. Where do you live?

A. Monroe.

Q. What is your business?

A. Freight conductor for the Lake Shore and Michigan Southern Railway Company.

Q. Where were you last Saturday?

A. At Alexis that day.

Q. Did you see Mr. Lennon there?

A. Yes, sir.

Q. What was he doing?

A. Coming right along until he got stopped.

Q. Stopped where?

A. At Alexis.

Q. Near the office?

A. Yes, sir.

Q. What occurred there, to your knowledge?

A. They had the block up. I went in, and there was a message sent for me to take a car further south. I handed Lennon the message, and he said he would quit.

Q. What was the message?

A. To take two cars from Alexis to go further south. I handed Lennon the message, and he read it, and he said he would quit.

Q. What message did you hand him?

A. The one take the car.

Q. What then occurred?

A. I went over and sent a message that he said he would quit before he would take the car.

Q. That was what he said?

A. He told me that he would quit.

Q. Would quit before he would take the car?

A. He didn't say that. All he told me was that he would quit.

89 Q. You sent that telegram to Mr. Hand of the 18th: "Jim Lennon says he will quit before he takes the car"? Is that what he said?

A. Well, he told me that he would quit. That is the message I sent.

Q. Why did you add to that "before he will take the car"?

A. I thought it was on account of the cars.

Q. What made you think so?

A. He didn't say anything about quitting before we got there.

Q. What was the message you showed him?

A. To take the car from Alexis.

Q. Then did you know about another message being received from Mr. Hand and shown to him?

A. There was two other messages I seen, but I don't remember what they were.

Q. And did you know about his sending back a message that he would agree to take the train if the Ann Arbor cars were left out?

A. Yes.

Q. What did you know about it?

A. He said he would take the train and go.

Q. Whom did he say that to?

A. I don't know; he reported or sent a message or something.

Q. You heard him say that, did you?

A. Yes, sir.

Q. Did you know about the message sent by Mr. Chillcott—did you know about Chillcott's sending a message to Mr. Hand?

A. Not as I remember.

Q. About what Lennon said he would do?

A. No, sir.

Q. Did you know about Watson's dispatch being received there?

A. Yes, sir.

Q. And up to the time that that was received Lennon was there with his engine, was he?

A. Yes, sir.

Q. And business was at a standstill, because he wouldn't go on and haul that car until Watson's message was received, wasn't it?

A. Yes, sir; but there was a block-up for us, too.

Q. Immediately upon receipt of the Watson message and its delivery to him, did he go on with his train?

A. Yes, sir; when that message was sent he came along and took the cars.

Q. And the Hand messages were received along some hours previous to that?

A. Yes, sir.

The COURT:

Q. Were you present when Canniff's order and the order of the court were shown to Lennon?

A. No, sir.

Mr. SOUTHARD:

Q. I understood you to say that he quit the service of the company when you handed him the order to take this car?

A. Yes, sir; he said he would quit or "I will quit," or something of that kind.

Q. What did he say about being willing, or otherwise, to take the train wherever you might ask him to do it?

A. He was willing to take the train, but not as long as he had to take the car.

Q. Didn't he say to you that he would take the train and put it on the side track or take it to Air Line Junction or wherever you wanted it placed?

A. Yes, sir.

Mr. GREENE:

Q. But not that car?

A. He would—he would quit when he was asked to take that car.

Mr. SOUTHARD:

90 Q. At the time he got that first message didn't he say "I am no longer in the service of the company"?

A. He didn't say that to me; he said he had quit.

Q. What did he say?

A. He said, "I quit" after I handed him that message.

Q. Didn't he insist all along that he had quit and was not in the service of the company?

A. He didn't say so to me.

Q. You understand that he is not in the employ of the company since that time?

A. I don't know whether he has been at work or not; I have not seen him at work since we got to Air Line Junction.

91 W. H. CANNIFF, being first duly sworn, testified as follows:

Direct examination by Mr. POTTER:

Q. You are the general superintendent of the Lake Shore road?

A. I am.

Q. How long have you been in the service of that company?

A. Thirty years.

Q. And in what departments of the service have these years been spent?

A. Well, in various branches of the service, from that of night watchman. The next was telegraph operator; then station agent; then the position of track master; then division superintendent; then assistant general superintendent, and then general superintendent.

Q. How long have you been general superintendent of the Lake Shore road?

A. Since a year ago last January—the first of last January.

Q. In performing such services what are your duties generally and over what do you have supervision and control?

A. Well, I have charge of the trains and stations and general supervision.

Q. In other words, the general supervision of the operating department, I take it?

A. Yes, sir.

Q. When were you first informed or first advised of the Ann Arbor trouble, so called—the trouble between the Ann Arbor people and their engineers and firemen—when did you first know of that condition—about when?

A. I think it was the evening of the 7th of March; I think about 11 o'clock at night. Shall I state how I knew?

Q. Yes.

A. That knowledge came to me by receipt of a message from Mr. J. W. Watson stating that there was trouble.

Q. What time was it that you received that message?

A. I received it about 11 p. m.

Q. On the night of the 7th of March?

A. Yes, sir.

Q. Where were you?

A. I was in my room at the Stillman hotel, at Cleveland.

Q. Have you a copy of that message or the original with you?

A. I have.

Q. Will you produce it, please, and read it?

A. This is dated at Toledo, March 7th.

Mr. HURD: I don't know as this is competent.

Mr. POTTER: I propose to follow it up with proof showing the relation which Mr. Watson bore to these parties here and as to his notifying them of his knowledge and condition. The proof which we propose to fill up will bear upon the question as to the notice to the engineers of the order made by the court in this case and upon their good faith in the matter.

92 The COURT: Well, this may be received subject to Mr. Hurd's exception.

Mr. HURD: Yes, sir.

Mr. POTTER:

Q. You may read the message.

A. This message is addressed to me at Cleveland and reads as follows: "We ask you in the interests of peace and harmony not to ask your engineers to handle and Toledo, Ann Arbor & North Michigan business after six o'clock a. m., March 8th, as the engineers and firemen of said road go out on a strike. (Signed) J. W. Watson, chairman."

Q. What relation did he hold to the Lake Shore & Michigan Southern Railway Company?

A. He is one of our passenger engineers.

Q. What position did he hold with reference to the Brotherhood of Locomotive Engineers at this point?

A. My understanding is that he was the chairman of the committee of the Brotherhood, so far as Lake Shore matters were concerned.

Q. Now, what response did you make to Mr. Watson's telegram, if any?

A. I made none that night, but on the next morning I telegraphed Mr. Watson, about 10 o'clock in the forenoon. I addressed a message to Mr. Watson, Toledo, as follows: "I have your message requesting that we do not ask our engineers to handle Toledo, Ann Arbor & North Michigan business after six o'clock a. m., March 8th. We cannot grant the request. The business we interchange with that line is equally the business of this company. It is clearly our duty as common carriers that we continue to transact our business with the Ann Arbor road as heretofore. The law compels us to do this, and we should not be asked to violate its provisions. I trust our engineers will consider this matter carefully before refusing to do what is clearly our legitimate business and which we must endeavor to perform." I sent the message to Mr. Watson.

Q. What, if any, reply did you receive from him to that message?

A. I received no reply.

Q. When did you next see him, if at all, or confer with Mr. Watson? You may go on and state.

A. I don't remember whether I did or did not see Mr. Watson the next day——

Q. Before we come to the next day's messages—in the meantime, between the 10th and the subsequent day—what transpired with reference to the receiving of freight from the Ann Arbor road or the delivery of freight, whether the conditions were such as that any could be received or delivered?

A. The conditions were such that there could be no freight received. There were local or natural conditions up to Saturday night of the 11th.

Q. When, if at all, did you next receive any messages or message from Mr. Watson after this which you have given us?

93 A. The next message that I received from Mr. Watson was on the evening of the 16th.

Q. You may state what had transpired in the meantime before the night of the 16th in the conduct of this business.

A. Well, on Saturday, the 11th, Mr. Stevens, our superintendent of motive power, and I came to Toledo in the evening. I learned that an application had been made to Judge Ricks for an order requiring the company to transact its business. The next morning Mr. Stevens and I sent out notices to 35 of our engineers asking them to come to the office, and, as I remember, 35 or about that number of our engineers responded to that notice. They were invited to come to the office at 11 o'clock on Sunday. As I have stated, about 35 of the boys, the engineers, came to the office. Among them was Mr. J. W. Watson and Mr. Clark.

Q. One of the gentlemen mentioned in this proceeding?

A. Yes, sir; and Mr. Case.

Q. Another of the gentlemen mentioned in this proceeding?

A. Yes, sir.

Q. I will ask you to state to the court whether the order which had been issued by the circuit court at Cleveland—whether you had seen it published in the morning papers.

A. I hadn't seen the order, but I had seen a notice in the morning paper that such an order had been granted.

Q. You say these parties appeared at what time in the office?

A. The engineers commenced coming, I should say, about 11 o'clock, and by 12—I think they were all there about that time.

Q. Was Mr. Conley also present at that meeting?

A. I don't know Mr. Conley personally. I can't answer that.

Q. Go on and state what transpired.

A. Well, at this meeting it was my desire that we avoid being drawn into any trouble, and the whole effort on my part and that of Mr. Stevens was to try and convince our men that we must—that it was our duty to transact our legitimate business.

Q. I will ask you to state if at that meeting you stated to them the substance of what you understood this order to be.

A. I did.

Q. What was it that you said to them upon that subject?

A. That our understanding was that such an order had been issued.

Q. What order?

A. The order of Judge Ricks.

Q. For what—what did you say the order was?

A. Compelling the Lake Shore Company to transact business with other lines and the Ann Arbor.

Q. How had you received yourself that notice and when and from whom did you receive notice of the fact that an application had been made and that the order probably would be granted?

A. From Mr. Potter, our local attorney.

Q. You may go on and state fully what further transpired at this Sunday meeting.

A. Well, I don't know that I can state further than that the meeting lasted about two hours, all of which time was taken up with an effort to show what the company's duty in this matter was,
94 and that the avoiding of doing what this order compelled or what the law compelled us to do was a very bad state of things, and that somebody would be responsible if such a thing occurred. There was a great deal said in that direction.

Q. Now, that day was Sunday, the 12th?

A. Yes, sir.

Q. Now, then, you may go on and state what transpired subsequent to that time.

A. Well, that meeting closed, as I remember, about half past two, and we were advised—I was advised by Mr. Lathrop, one of our engineers who attended that meeting, that some effort was being made to get an interview with President Ashley, of the Ann Arbor road, and he left that meeting with the understanding that he was going to do what he could in that direction. As near as I can remember, about five o'clock that evening, probably a little before or a little after, Mr. Stevens and myself were in my car at the depot, and Mr. Watson and Mr. Silliman, one of our engineers, and Mr. Harvey came to the car and notified me that the Lake Shore could go on and do business as usual; that this notice with regard to not interchanging freight was withdrawn pending negotiations.

Q. In other words, the boycott was suspended?

A. That was my understanding of it. Yes, sir.

Q. Mr. Watson, you say, was present?

A. Mr. Watson was one of the three who gave me this notice personally.

Q. That was when?

A. Sunday evening, as near as I can remember, about 5 o'clock; perhaps a little later. Nothing else transpired, as far as I know, except that our business went on as usual until about six o'clock of the evening of the 16th.

Q. The time between Sunday evening and the 16th, was that the time that Mr. Kirkby was negotiating, as you understood, with the Ann Arbor people?

A. I understood that he was. Yes, sir.

Q. And went along until the evening of the 16th?

A. Yes, sir. While coming over one of our divisions I received a message from Mr. Watson.

Q. Have you that message with you?

A. I have.

Q. You may produce it if you please.

A. This mes-age is dated Toledo, March 16th, 1893. I received this message at Diamondale, Michigan.

Q. What time of the day or night?

A. It was about 4.30. I am not positive about that.

Q. Afternoon or morning?

A. Afternoon. The message that I received read: "All efforts to

effect an honorable settlement of the grievances of the engineers and firemen on the T., A. A. & N. M. railway have failed. The laws of the Brotherhood will be carried out after six o'clock a. m. of the 17th. J. W. Watson, chairman."

Q. Is the hour given when it was sent?

A. Not on the copy of the message that I have.

Q. What was the answer that was sent by you to him?

95 A. I then made this answer to Mr. Watson: "To J. W. Watson, Toledo: I have your message of this p. m., that 'All efforts to effect an honorable settlement of the grievances of the engineers and firemen on the T., A. A. & N. M. R'y have failed. The laws of the Brotherhood will be carried out after six o'clock a. m. of the 17th.' Do I understand from your message that engineers and firemen of the company will refuse to handle the business interchanged with the T., A. A. & N. M. R'y?" I signed that dispatch

Q. Did you get any answer in response to that?

A. I did not.

Q. When, after that, did you next see Mr. Watson, if at all?

A. I came to Toledo that night, and the next morning, in the superintendent's office, while there in consultation with Mr. Wright, Mr. Johnson, and Mr. Sheldon, and Mr. Sheldon and yourself and Mr. Watson came to the office.

Q. I will ask you to state whether or not at that time he acknowledged receipt of the telegram which you had sent him.

A. He did.

Q. You may go on and state what transpired at that time.

A. Mr. Watson came to the office and he acknowledged receiving my message and stated—or in answer to my question as to whether our engineers would refuse to receive—whether I was to understand from his message that our engineers would refuse to receive and handle that business, he said that was it—that was the idea.

Q. In other words, you put the same interrogatory to him verbally that you had put in the message?

A. Yes, sir.

Q. And what was the response to that inquiry?

A. That was it; that was what they would do.

Q. What further transpired, if anything, at that time?

A. Well, there was some further conversation about it, but of the same tenor. I don't know that I can give it clearer than that.

Q. And that was on the morning of the 17th?

A. That was on the morning of the 17th; yes, sir.

Q. What next, within your knowledge, was done or transpired or what was done by you in reference to the executing of the order of the court?

A. Well, I will state that on the receipt of Mr. Watson's message the night previous I at once telegraphed Mr. Johnson to arrange with you for the printing of five hundred copies of Judge Ricks' order, and, on arrival here the next morning and, as I recollect it, about the time or soon after Mr. Watson called at our office, I wrote the notice that has been shown attached to this order and directed Mr. Johnson to see that these notices were posted on the various

bulletin-boards, and I also directed that a sufficient number of copies of this order with my notice attached—to our men—should be sent to Air Line Junction and Alexis, Monroe, and Detroit, so that they could be presented to the men in addition to the notices on the bulletin-boards.

96 Q. What further transpired, if anything?

A. I don't remember now that anything out of the ordinary transpired at all until, as I remember, about six o'clock of the evening, of the evening of the 17th, I was advised that Mr. Clark, one of our engineers, had refused to take some Ann Arbor cars.

Q. And as to what transpired at Air Line Junction; that is the way, I suppose, that was reported to you?

A. I know nothing about that.

Q. Not of your own knowledge?

A. No, sir.

Q. To what extent do you know of the publication of the order entered by Judge Ricks on the evening or afternoon of the 11th; to what extent was that, within your observation, published or circulated or distributed, either in the papers or published and distributed within your knowledge?

Mr. HURD: That does not tend to show that these defendants received the notice.

Mr. POTTER: I think it does. It is not conclusive upon the question; but if your honor's orders were published in the papers of the city of Toledo on Monday morning or Sunday, generally known or published and distributed, it is a circumstance proper to be considered; it is not conclusive of actual notice of the receipt of the order, but still it shows the good faith.

The COURT: It may be a circumstance to show the receipt of notice.

Mr. POTTER: I don't know the extent of Mr. Canniff's knowledge of the publication and distribution of this order.

WITNESS: I should say that on Sunday morning, as near as I can remember now, about nine o'clock or perhaps a little later, Mr. Wright and I were coming down town from our office, and Mr. Husted, our local agent, boarded the car that we were on and had, I should judge, fifteen or twenty of these printed notices.

Q. Did you notice or see the printed order in the published papers here in the city?

A. I did later in that day, in the afternoon papers of Monday.

Q. Did you notice whether it was published in the Monday morning Commercial?

A. Yes, I remember seeing it there.

Q. How many of these copies of the order were ordered for distribution among your men, do you remember?

A. Well, at the time I refer to, on Monday, there were probably 15 or 20 copies, but they were not then distributed either on the bulletin-boards or to our men; but on the night of the 16th I directed Mr. Johnson, our division superintendent here, to arrange with you for getting 500 copies printed.

Q. I don't think of anything further to inquire about in reference to the transaction. If there is anything more that occurs to you, it is proper for you to state it.

A. No, I don't think of anything..

(No cross-examination.)

97 JASPER W. WATSON, first being duly sworn, testified as follows:

Direct examination by Mr. GREENE:

Q. Where do you reside?

A. In Toledo.

Q. What is your business?

A. Locomotive engineer.

Q. And have been for how many years?

A. Oh, 23 years, I guess.

Q. Are you in the employ of the Lake Shore & Michigan Southern Railway Company?

A. I am now; yes, sir.

Q. Are you a member of the Brotherhood of Railway Engineers?

A. Of the Brotherhood of Locomotive Engineers; yes, sir.

Q. What position do you occupy in that Brotherhood?

A. I don't occupy any position at all.

Q. What position have you occupied in the Brotherhood?

A. I have occupied the position of chief engineer of a subordinate division a number of years ago.

Q. Who is at the head of the organization?

A. P. M. Arthur is the grand chief.

Q. Is there a local organization here?

A. There is a division here.

Q. Who is at the head of that?

A. James M. Lathrop.

Q. You are a member of that division?

A. Yes, sir.

Q. Are you upon some committee connected with that division of the Brotherhood?

A. Yes, sir; I am on a committee connected with that division.

Q. What committee?

A. I am on the general grievance committee or general committee of adjustment for the Lake Shore & Michigan Southern Railway.

Q. Who are the other members of the committee?

A. Mr. Wheaton, Mr. Conway, and Mr. Tuffts.

Q. Do they all reside in Toledo?

A. No, sir; Mr. Wheaton lives at Elkhart, Indiana; William Conway, at Chicago, Illinois; S. T. Tuffts, Cleveland, Ohio; Adam Hoffman, Ashtabula; C. C. Haskins, Collinwood, and Baldwin, of Buffalo.

Q. Some telegrams have been referred to here—one telegram, if

not more—signed by you as chairman. Did you sign them as chairman of the committee that you speak of?

A. Yes, sir.

Q. Have there been recently any meetings of that committee?

A. No, sir.

Q. By what authority did you issue those orders or telegrams?

A. By what authority?

Q. Yes.

A. Well, the authority vested in me by the members of the Brotherhood on the Lake Shore road.

Q. When and how were you invested with that authority?

A. By being elected chairman of that committee.

Q. Are your powers and duties as chairman of that committee defined by any resolution, constitution, or by-law?

A. No—well, yes; we have got a rule to govern the actions of the committee; yes.

Q. Have you that with you?

A. I have not; no, sir.

98 Q. Where is it?

A. I think Mr. Wheaton has a rule of that kind.

Q. Where?

A. I don't know whether he has got a copy of the rules here with him or not. He is here in Toledo.

Q. Haven't you within your reach or control a copy of the rules, regulations, by-laws, or constitution?

A. Of this committee?

Q. Yes, sir; or of the Brotherhood.

A. Yes, sir. I can get it; yes, sir. I have given up the copy of the constitution and by-laws of the Brotherhood into the court.

Q. There are some other rules of the Brotherhood, are there not, or is some other rule than those which you have submitted here within a few days?

A. This rule of the general committee.

Q. When was that adopted?

A. It was adopted last fall.

Q. What is that rule?

A. Well, that—I couldn't repeat it.

Q. Repeat it to the best of your ability; give us the substance of it if you can't give the exact language.

A. Oh, it was just rules governing the action of the committee; that is all. It would be impossible—I couldn't repeat it.

Q. Is it written or printed?

A. It is printed; yes, sir.

Q. Where is there a copy of it?

A. I think likely Mr. Wheaton has got a copy of it.

Q. Is Mr. Wheaton here?

A. I think he is.

Q. Will you ask Mr. Wheaton if he can't furnish a copy of that?

WITNESS (to Mr. Wheaton): Can you furnish a copy of that rule?

Mr. WHEATON: I don't know.

Mr. GREENE:

Q. You have a copy yourself, have you not, somewhere?
A. Yes, sir; I have got a copy at home.
Q. How far do you live from the court-house?
A. Well, I can't tell just exactly. I should think probably about two miles and a half.
Q. You could get it during the noon recess, I suppose?
A. Oh, yes, I could get up there and back in an hour.

Mr. WHEATON: I have not got it in my effects here. I possibly may have it in my pocket down at the hotel.

Mr. GREENE:

Q. When were these rules adopted; at what time last fall?
A. They went into effect the first day of January.
Q. How were they promulgated; published and sent around?
A. Yes; two copies were sent to each subordinate division on the line of this system.
Q. By whom were they adopted and promulgated?
A. By the committee, of seven men.
Q. Were they approved by the Brotherhood, by the general organization?
99 A. Well, now, I can't say whether they were or not. I can't say. It has nothing to do with the general organization anyway.
Q. Have there been any rules, laws, or by-laws adopted by the Brotherhood in addition to or beyond those which you have here filed or submitted?
A. I think there has; yes, sir.
Q. Those that you have filed or furnished to Mr. Smith in this case were the laws and constitution or organization as it existed about a year ago, are they not?
A. Yes, sir.
Q. Since that time there have been some material modifications or additions to the laws, have there not?
A. No, sir.
Q. Not any?
A. Not to the general—not to the Brotherhood; no, sir.
Q. What was it that you filed or delivered here?
A. A copy of the constitution and by-laws of the Brotherhood of Locomotive Engineers.
Q. And do you say that there has been no modification or addition to those by-laws?
A. No, sir; there has not, not to my knowledge.
Q. Yes. Each division has a right to adopt by-laws of its own for its own government?
A. Yes, sir; for its own government if it don't conflict with the general laws.
Q. Here is a message. Did you send this message to Mr. Canniff on the 16th: "All efforts to effect an honorable settlement of the grievances of the engineers and firemen on the T., A. A. & N. M.

railway have failed. The laws of the Brotherhood will be carried out after six o'clock a. m., the 17th. J. W. Watson, chairman C. C. A."? Did you send that message?

A. Yes, sir.

Q. What laws did you refer to in that message?

A. The laws of the Brotherhood.

Q. Will you point out or tell me the provision of the law which you said would be enforced or carried out?

A. I can't do it.

Q. Why?

A. Because I haven't anything further than what I have given you.

Q. Had you any law in your mind at the time you wrote this message that would be enforced?

A. Yes. I had laws in my mind.

Q. What law had you then in mind that would be enforced?

A. The laws of the Brotherhood.

Q. What law, and what would be its effect and the operation of its enforcement?

A. Well, the effect would be that the men should use their own judgment as individuals—that is, what they should do.

Q. What is the language of the law of the organization—that every man shall do as he pleases, or is it understood that in order that a railroad engineer may do as he pleases that it shall be provided by a law of the Brotherhood that he may do so?

A. I don't understand that.

(Question repeated to witness by stenographer, but not answered.)

Q. Did you have a conversation with Mr. Canniff the next day?

A. What next day?

Q. After you sent this telegram.

A. Yes, sir.

100 Q. Before seeing him, had you received a message from Mr. Canniff, acknowledging receipt of your message, which I have just read, and closing with this inquiry: "Do I understand from your message that the engineers and firemen of the Lake Shore & Michigan Southern Railway will refuse to handle the business interchanged with the T., A. A. & N. M. R'y?"—did you receive that message?

A. Yes, sir.

Q. Did you answer it?

A. I didn't.

Q. Why not?

A. Well, I did; I didn't send him any message; I made a verbal reply to that.

Q. When did you receive his message?

A. I can't tell now; I don't remember just when I did receive it; it must have been about eight o'clock in the morning, I think.

Q. And what time did you see him?

A. I can't remember the exact time; it was some time, maybe an hour, perhaps later than that, and maybe two hours.

Q. Did he repeat to you that inquiry?

A. Yes, sir.

Q. And what reply did you make?

A. I can't tell now what the reply was.

Q. Tell me as well as you can.

A. I told him that we expected that—well, I can't undertake to repeat it.

Q. Oh, well, it is only a short time ago. I want you to give me the best answer you can; state as fully and definitely as you can how you answered that inquiry.

A. I can't tell just how I did answer it.

Q. I don't say "just how" you did it, but substantially how you did it.

A. Will you repeat that question again?

Q. We have got to this point: Mr. Canniff telegraphed you and asked you if, from that message, he was to understand that the engineers and firemen of the Lake Shore & Michigan Southern Railway Company would refuse to handle the business interchanged with the T., A. A. & N. M. R'y.

A. Yes, sir.

Q. You didn't answer that message by telegram, but you did in person?

A. Yes, sir.

Q. What did you say to him?

A. I told him that we expected that his men would refuse to handle Ann Arbor cars.

Q. Well, you told him what information you had upon which you based that answer to his inquiry?

A. What information I had?

Q. Yes; told him every ground that you had to expect any such a thing—all the information you had upon this subject.

A. I expected that they would carry out the rules of the Brotherhood.

Q. What rule? Tell me; that is the very rule I want you to tell me about now.

A. I can't repeat the rule.

Q. Well, the substance of it; you expected that he would carry out the rules of the Brotherhood, and therefore would refuse to handle the business and interchange with the Ann Arbor; is that your answer?

A. It seems to be the answer; words to that effect.

Q. Well, just exactly that effect, isn't it?

A. We have got no rules.

101 Q. No, no; I want to keep to this question. You stated to him that you expected the men would refuse to handle the freight. I ask you why you expected it and you say because you expected that they would carry out the rules of the Brotherhood. Have you not so stated?

A. Yes.

Mr. SOUTHARD:

Q. What were you about to say about having no rules?

Mr. HURD: Mr. Arthur has filed a rule in the court here this morning.

Mr. GREENE: I wish you would produce it.

Q. Have you filed or caused to be filed here any rule this morning?

A. No, sir.

Mr. HURD: It is a rule filed by Mr. Arthur, the grand chief.

Mr. GREENE:

Q. I want you now to give me the substance, as near as you can, of the rule that you had in mine when you sent that telegram to Mr. Canniff and when you said to him that you supposed that the enginemen would carry out that rule and refuse to handle this freight. Tell me that rule, the substance of it, as you then had it in mind.

A. Why, that—I can't repeat the rule or, perhaps, anywheres near it.

Q. Take the substance of the rule. Did it bear upon the question of the handling of freight of a road when the employés were upon a strike and persons other than members of the Brotherhood had taken the place of the strikers? Did it relate to what, in your parlance, is known as scab freight?

A. No; the rule is something like this—I can't repeat it or make any pretensions of repeating it, but I will tell you as near as I can—that where there is any trouble exists upon any road it will be illegal, or unlawful, or something of that kind, for engineers on connecting lines to handle any of their business.

Q. Repeat that again. I didn't get it exactly.

A. Where any trouble—where trouble exists between engineers and former employers on any line it will be illegal or unlawful—I can't—to handle any business of the road where this trouble exists.

Q. That is, that it is illegal and unlawful according to the rules of the Brotherhood?

A. Yes, sir.

Q. And who is to declare or determine when that state of things exists, members of the Brotherhood, of the existence of such a state of facts as renders it unlawful for them to handle the freight of that road? Who is charged with the duty of declaring and determining when that time arrives?

A. It may be the grand officers.

Q. What grand officers?

A. The grand chief engineer.

Q. How about the local organizations?

A. Well, I don't know of any law that specifies who it shall be.

102 Q. Well, in this case who did promulgate or declare the fact that the time had arrived?

A. The notice was sent to me, and I notified the members—a half a dozen men.

Q. What was the notice sent you?

A. That there was a legal strike on the Ann Arbor road at 6 o'clock.

Q. Whom did you receive that from?

A. P. M. Arthur.

Q. When?

A. I can't give you the date.

Q. About when?

A. It was the afternoon previous to the strike on the Ann Arbor road. Let us see; that was the 7th that I got that letter.

Q. Where is that notice?

A. I tore it up.

Q. Repeat its language as near as you can.

A. I couldn't repeat it.

Q. As nearly as you can.

A. It was just a notice notifying me that there was a legal strike on the Ann Arbor road.

Q. What did you do by reason of that notice?

A. I notified Mr. Canniff.

Q. Who else?

A. Anybody that I met. I told them that I had received notice that there was a strike on the Ann Arbor road.

Q. What do you mean by "anybody that you met"?

A. Men in the service.

Q. Engineers and firemen?

A. I don't think I saw any firemen.

Q. Was there a meeting called of the division?

A. No, sir.

Q. How did you notify the members of your division?

A. Why, whenever I met them.

Q. Haven't you any system of notification?

A. No, sir.

Q. You say you notified Mr. Canniff?

A. Yes, sir.

Q. How did you notify him?

A. By wire.

Q. When did you do that?

A. The evening of the 7th I think it was.

Q. And what did you wire him?

A. He read the message here that I sent him.

Q. After you received that notice from Mr. Arthur that there was a legal strike, you then understood that it was the duty, in accordance with the rules and the laws of the Brotherhood, for the Brotherhood of Engineers and Firemen to decline to receive or deliver traffic to and from that company, did you not?

A. Yes, sir.

Q. And to refuse to afford them any of the usual facilities as a connecting line; you understood that to be their duty under the laws of the Brotherhood?

A. To not handle any of their business.

Q. Did you know each and all of the engineers and firemen who are here answering in this proceeding for contempt?

A. Well, I don't know all of them; I know most of them, though.

Q. Are they members of the Brotherhood?

A. Mr. Clark and Mr. Lennon are members of the Brotherhood.

Q. How about the others?

A. I don't know anything about the others.

Q. Who has the list of membership? If they were members would they be members of this division?

A. Yes, sir.

103 Q. Don't you know who were and who were not members of the division?

A. No; certainly not; I don't know all the men in that division.

Q. Who has a list of the members—who is the secretary?

A. Why, J. H. Knight is the secretary of this division.

Q. Did you, after receiving notification from Mr. Arthur, have some communication or conversation with Mr. Lennon?

A. No, sir; I have not seen Mr. Lennon, until last Monday, for two months.

Q. He is one of the members, is he not?

A. Yes, sir.

Q. You telegraphed——

A. Yes; by request of Mr. Stevens.

Q. You didn't say to him that, by authority of Mr. Stevens, he could go along and handle Ann Arbor freight, did you?

A. I said by Mr. Stevens' request.

Q. By what authority did you tell him that he might handle Ann Arbor freight?

A. Because I had been notified that the court had ordered it.

Q. When were you notified that the court had ordered it?

A. I got the notice about 12.30 that day—of the 18th, I think it was.

Q. Didn't you know of the order made by this court before that day?

A. I had heard of it; yes, sir.

Q. You had seen it in the papers, hadn't you, and read it?

A. I hadn't read it through; no, sir.

Q. You had read the substance of it?

A. I had not read the order of the court through.

Q. Hadn't it been the subject of conversation between yourself and many others for days before you sent this message to Mr. Lennon?

Mr. HURD: That is a pretty strong way of examining your own witness.

Mr. GREENE:

Q. Hadn't that been discussed as early as the Sunday preceding?

A. Yes; I heard Mr. Canniff telling something about it in the office on Sunday.

Q. And you saw the order published in the papers on Monday, the next day, didn't you?

A. I couldn't tell you as to that.

Q. During the most of the week the freight was handled, was it not—Ann Arbor freight—right along down to Friday afternoon?

A. Well, that is something that I don't know anything about.

Q. What?

A. That is something that I don't know anything about.

Q. Down to the 16th—what date did you receive that notification from Mr. Arthur that there was a legal strike?

A. On the 7th, wasn't it?

Q. Well, by some power or authority the boycott was suspended until the 16th, wasn't it, when you telegraphed Mr. Canniff that efforts had failed—some nine days—it was suspended from natural causes until Monday?

A. Yes.

Q. Then there was an arrangement to suspend it pending negotiations?

A. Yes, sir.

Q. Who made that arrangement on the part of the Brotherhood, or how were the Brotherhood informed that the boycott was off pending the negotiations?

A. They were informed through officers.

104 Q What officers?

A. The grand chief.

Q. Did you get a communication to that effect?

A. Yes, sir.

Q. When did you get that?

A. That was Sunday night. I can't remember the date now.

Q. By telegraph?

A. No, sir; it was handed to me by A. B. Youngson.

Q. Where is it?

A. I destroyed it.

Q. Why didn't you preserve it and the other communication?

A. I had no reason to preserve it.

Q. What were the contents of that communication?

A. The contents has been repeated here, I think. It was something like this: that pending negotiations between the president of the Ann Arbor and Mr. Kirkby, the railway commissioner of Ohio, this rule that I have given you would be suspended.

Q. He didn't say, "This rule that I have given you." What did he say about the rule?

A. That this rule would be suspended. He gave the number. I don't remember just exactly.

Q. What do you think the number was?

A. Rule 12, I think it was.

Q. Is that a rule in the book which you have filed here?

A. No, sir.

Q. Both of these communications which you received, the one declaring the strike and the one declaring the suspension, were signed by Mr. Arthur?

A. Yes, sir.

Q. And do you understand that it is for the chief, Arthur, to declare and notify the Brotherhood when a strike exists and when they shall boycott a road upon which a strike or difficulty exists?

A. No, sir; he don't have to do anything of the kind. He notifies them that there is a legal strike on the road.

Q. Who determines this, when the boycott shall commence and when it shall end?

A. There isn't anybody to determine that.

Q. Nobody?

A. No, sir.

Q. What, then, was the object of Mr. Arthur's first communication to you declaring that that state of things existed?

A. Why, to notify us that there was a legal strike.

Q. It is for him to determine when it exists and when it is off?

A. Yes, sir.

Q. So that his declaring that there is a legal strike is in fact declaring a boycott against that road?

A. Why, yes.

Q. That is, as you understand the rules and practice of the Brotherhood?

A. The rules and practice of the Brotherhood.

(Noon recess, Wednesday, March 22.)

105 2 o'clock p. m., March 22, 1893.

Mr. Greene:

Q. I understood you to say that you telegraphed Mr. Lennon at the request of Mr. Stevens?

A. Yes, sir.

Q. You met Mr. Stevens on the street?

A. I met him here at the depot; yes, sir.

Q. What did you say to him as to the boycott being declared off?

A. I told him that I had received information that I could—the words that I used was that I had received information that I could stop this quitting; stop the engineers quitting.

Q. And that you could stop the refusal to handle Ann Arbor freight?

A. I don't think that I used them words. I don't recollect using them words.

Q. You recollect stating to him in substance that the boycott was off?

—. That is what I said. He said, "Jim Lennon is out to Alexis, and I wish that you would relieve him if you can." I told him I would if I could.

Q. In pursuance of that promise to relieve him, you sent this telegram?

A. Yes, sir.

Q. Had you had any conversation with Lennon before?

A. I hadn't seen Lennon in two months, I don't think.

Q. In reference to your knowledge of the order of the court and Mr. Canniff's circular, do you recollect on Sunday fixing right underneath one of those circulars of Mr. Canniff and the order of the court that was bulletined a picture of some Columbian ships, and saying that those were the ships that would bring over the men to take the boys' places?

A. Do I recollect doing that?

Q. Yes.

A. No, sir.

Q. You have no recollection of that?

A. No, sir.

Q. At any time?

A. No, sir.

Q. See if I can refresh your recollection a little as to the language of the telegram that you received from Mr. Arthur. On the 7th I think you said you received the first one.

A. Yes; I think it was the 7th.

Q. Was this the telegram in substance:

"There is a legal strike in force on the Toledo, Ann Arbor & North Michigan Railroad Co. Notify all your men to be governed accordingly.

(Signed) P. M. ARTHUR."

A. I think that that is about the way the message read.

Q. It was those words or that in substance?

A. Yes, sir.

Q. In pursuance of that telegram you proceeded to notify all your men, did you?

A. No, sir; I didn't notify all the men.

Q. Well, some of them?

A. I notified some of them; yes; those that I met.

Q. And set on foot measures whereby you understood all would be notified?

A. Yes; you might say that.

106 Q. That was the 7th. This injunction was allowed by his honor on the 11th, Saturday, although you had some information on Sunday that Judge Ricks had granted that injunction, had you?

A. Well, I heard Mr. Canniff saying something about it on Sunday.

Q. Then on the day following, on the 13th—Monday—the boycott was declared off, was it?

A. It was declared off Sunday night.

Q. How was it declared off?

A. By an order from the—a notice from the assistant general chief.

Q. Who was he?

A. As I said before, Johnson.

Q. Where was that?

A. At the Boody house.

Q. He was deputy grand chief?
A. Assistant grand chief; yes, sir.
Q. Give us his full name, please.
A. A. B. Johnson.
Q. And to whom and how did he communicate the order declaring the boycott off?
A. He handed me a copy of a message; he handed me a message.
Q. What was that message; who was it from?
A. Pending negotiation between Railway Commissioner Kirby and Gov. Ashley—I can't remember the number of the rule—be suspended.
—. Rule 12 is that?
A. I think that is the number of the rule.
Q. And who was that telegram signed by?
A. Signed by—it was signed by P. M. Arthur.
Q. And shown to you by this deputy or assistant grand chief?
A. Yes, sir.
Q. That was the 13th, was it?
A. That was Sunday evening.
Q. Then the boycott was ordered on again, as I understand you, the 16th?
A. I can't remember the dates.
Q. Just read that which purports to be a copy of the 12th rule, sworn to by Mr. Arthur, I believe; just read it so that you will know what it is there, and I will then ask you if that is the rule to which you referred this morning.
A. (Witness reads:) That is the rule.
Q. This is the rule to which you referred this morning as being the one that you referred to in your telegram?
A. Yes, sir.
Q. To Mr. Canniff, that the rules of the Brotherhood would be observed?
A. It is a resolution.
Q. I will read this: "Twelfth." This was a bill.
A. Resolution; that is what it is known as in the Brotherhood, as a resolution.
Q. (Reads:) "Twelfth. That hereafter when an issue has been sustained by the grand chief and carried into effect by the B. of L. E. it shall be recognized as a violation of obligation for a member of the Brotherhood of Locomotive Engineers' Association who may be employed on a railroad running in connection with or adjacent to said road to handle the property belonging to said railroad or system in any way that may benefit said company in which
107 the B. of L. E. is at issue until the grievances or charge, of whatever nature or kind, has been amicably settled." When was this bill or resolution adopted and when did it become operative in the Brotherhood?
A. Well, now, I can't give you the dates.
Q. As nearly as you can.
A. Oh, three or four years ago.

Q. This was not the one, then, that was adopted last fall, that you speak of?

A. No, sir; I didn't say we adopted any rule last fall.

Q. Here is an edition of the constitution and by-laws of the Brotherhood, — purports to have been printed in '92, as revised at Atlanta in May, 1892. That resolution or bill does not appear in that publication, does it?

A. No, sir.

Q. Was it in existence at the time of that publication?

A. It was; yes, sir.

Q. Do you know why it was not published?

A. No; I do not.

Q. Will you tell me, please, what it means when it says that "it shall be recognized as a violation of obligation for a member" of the association to violate this rule? What is the obligation there referred to?

A. What is the obligation?

Q. Yes; what is the obligation that would be violated by a non-observance of this rule?

A. I would like to know if I have got to give up the obligation of our organization?

Mr. HURD: That is not involved in the question; that is apparent.

WITNESS: It is a violation of the obligation for a man not to carry out the rules of the organization.

Mr. GREENE: Is there any obligation by way of oath or penalty that would be violated?

A. There is an obligation, the same as all secret organizations.

Q. An oath?

A. An obligation.

Q. Is it an oath?

A. What is an obligation?

Q. If you will allow me to suggest that, I am interrogating you.

A. Whether there is an oath? That would be—I can't answer, because I don't know what you would call it.

Q. Do you understand that this obligation referred to in this rule has reference to an obligation taken by a member of the Brotherhood under oath?

A. No, sir; he is not under oath.

Q. What is the obligation?

A. I can't give it.

Q. Does it appear in this published book?

A. No, sir; it does not.

Q. Where does it appear?

A. It appears in the rituals of our organization.

Q. What is the meaning of the provision here that "when an issue has been sustained by the grand chief"—what is the
108 meaning of "issue" there, and how is it sustained by the grand chief?

A. He can say whether he can give his consent to their men's quitting if they see fit or not. In this case here on the Ann Arbor road he gave his permission.

Q. Permission to what?
A. To quit.
Q. To strike?
A. Yes; if they saw fit.
Q. What is the form of that permission?
A. There is no form.
Q. Does he telegraph or communicate with persons in effect as he did to you that you should observe the rules of the organization?
A. No, sir; he was right here with the committee.
Q. Right here with what committee?
A. Committee of the Ann Arbor road.
Q. And that committee determine to strike, do they?
A. The committee determine to act as individual members or men employed on the Ann Arbor system decide.
Q. I don't know as I exactly understand that. The committee decide to decide, in fact, but leave every man to decide for himself; is that it?
A. Yes, sir; leave every man to decide for himself.
Q. The proceeding of the grand master is requisite to make that proceeding regular, is it?
A. It is necessary to have the approval of the grand chief; yes, sir.
Q. To permit the men to do as they please—each man?
A. Two-thirds majority; if they can get a two-third majority to agree to quit, why, they can quit.
Q. If the men don't quit after that majority has passed upon it and it has been approved by the chief, it is regarded as a violation of the obligation?
A. No, sir; they can quit or not, just as they see fit.
Q. I know, but if they do not quit they are regarded as acting contrary to their duties as members of the Brotherhood, are they not? In other words, it is expected, when two-thirds determine to strike, and that determination is approved by the grand chief, that a man who fails to strike is acting in violation of his duty as a member of the Brotherhood?
A. Why, yes; if they determine to strike.
Q. And subject to the same penalties or results of violating the obligation as in this case under rule 12, if a man does not observe it?
A. Yes, sir.
Q. And subject to expulsion?
A. Yes, sir.
Q. Forfeit of his interest in the life insurance?
A. Yes, sir.
Q. Or insurance, whatever it is?
A. Yes, sir.
Q. And deprived of all the advantages and benefits of the organization?
A. Yes, sir.
Q. Without possibility of restoration, or may that be condoned?

A. That is referred to the members of the subordinate divisions to decide.

Q. About the time you telegraphed Mr. Lennon or about
109 that time, what *what* did you do for the purpose of notifying the men that the boycott was off? You notified Lennon by this telegraph; what else did you do?

A. I didn't do anything any further than those I happened to meet—I told them that the boycott—that the order of the court that the boycott be raised, or words to that effect. I can't repeat the words that I said.

Q. Or that the boycott was raised, or words to that effect?

A. Something to that effect; yes, sir.

Q. What was there that led you to state at all that the boycott was raised?

A. I got a communication from the grand chief.

Q. What was that?

A. Stating that the orders of the court must be obeyed.

Q. Have you got that order?

A. No, sir.

Q. When did you receive that?

A. Well, now, I can't tell. I received it—I can't give the date. I received it about 12.30 the day that——

Q. The day that you telegraphed Lennon?

A. Yes, sir.

Q. And that was only about 12 minutes before you telegraphed him? No; you telegraphed in the afternoon. Repeat fully, if you can, what that telegram contained.

A. Well, I can't do that. I can't; I just give you the substance, as I did before; that is all I can do. I can't remember the words at all. It was to the effect that the order of the court must be obeyed; to notify the men.

Q. Was that all the information that it contained?

A. Yes, sir.

Q. And from that you understood that the refusal to handle Ann Arbor freight by the men was a violation of the order?

A. Yes, sir.

Q. How long had you understood that?

A. I understood it on the receipt of that message.

Q. But the message didn't say so at all; but the message simply said the order of the court must be complied with, and you said you understood that in order to comply with it it was necessary to raise the boycott? How long did you understand that the boycott was a violation of the order?

A. Nothing but the receipt of that message.

Q. Didn't that inform you that the order of the court must be obeyed? How did you know but what it might be obeyed and still maintain the boycott?

A. I can't tell how I did.

Q. You understood that order the first time you read it as to be against the boycott?

A. Yes, sir.

Q. That was along as early as the middle of the week, at least, wasn't it? This was Saturday. This was on the Sunday before that. You had understood it three or four days before you got the telegram from Arthur. You issued the order to continue the boycott, knowing the conditions of the order, and that was the previous——

A. Me issue order? I didn't issue any orders; I didn't issue orders at all.

110 Q. But you communicated to the men Mr. Arthur's order that rule 12 should be observed, and that you understood to require a reinstatement of the boycott, didn't you?

A. Yes; I understood that.

Q. And that was after you knew of the existence of the order of Judge Ricks and its requirements?

A. I think not.

Q. It was on Friday that you issued that order to the men. You knew of this order the Sunday previous?

(Not answered.)

Q. Well, we won't spend time upon that. I think the conclusion can be drawn. What was the rule adopted last fall that was put in effect in January?

A. That is it there. That is it there. I told you there is no rule in there in regard to this matter at all.

Q. This little book adopted at Cleveland October 13th, 1892, don't contain the rules that you referred to this morning as having been adopted last fall?

A. Yes, sir.

Mr. HURD:

Q. Those are the rules that relate to the employés of the Lake Shore Company alone?

A. Yes, sir.

Cross-examination by Mr. SOUTHARD:

Q. Did you see either of these men or have any communication with either of these men, who are members of the order—Mr. Lennon or Mr. Clark—after receiving word from Chief Arthur as to rule 12?

A. No, sir.

Q. Have any communication with them whatever?

A. No, sir, any further than the message I sent to Lennon at Alexis.

Q. I don't refer to that. Have you any knowledge that they knew of this communication between you and the chief?

A. I hadn't received this communication when——

Q. I mean your first communication.

A. Oh, the first. I don't know anything about whether they knew anything or not. I have no means of knowing. I hadn't said anything to them.

Q. Did you say anything to the other engineers or the firemen

about it? I mean those who are charged here with violating the order of the court.

A. Well, sir, I can't answer that question. I don't remember whether I met any of those boys or not.

Q. You can't tell?

A. No, sir; I can't tell.

Q. When was it that you said you made such communications as you did make of his—of his word as to there being a legal strike upon the Ann Arbor road?

A. When was it?

Q. Yes; as nearly as you can recollect.

A. It was—he notified me the afternoon of the 7th; I think it was 4 o'clock.

Q. After hearing or learning of the order of the court in this case did you make any communication of that kind?

A. No, sir.

111 Q. And, so far as you know, did any of these men who are charged with violating the order of the court act upon any such communication from you?

—. They certainly didn't act upon any such communication from me, for I didn't give them any communication.

Q. The firemen who are here charged, are they members of the Brotherhood of Locomotive Engineers?

A. No, sir.

Q. Have you learned or do you know whether either of the other engineers who are charged is a member of the Brotherhood?

A. I think not; I think they are not members.

Q. Other than Lennon and Clark?

A. No, sir.

Mr. HURD:

Q. In other words, Mr. Clark and Mr. Lennon are the only two of these gentlemen who are here under attachment who are members of your Brotherhood?

—. That is all.

Re-examination by Mr. POTTER:

Q. I understand you were present at the meeting of the engineers before Mr. Canniff on the Sunday morning, the 13th. You were present with the 30-odd engineers at his office, in Toledo?

A. Yes, sir.

Q. Do you remember any of those that were present at that meeting—of the engineers?

A. Why, yes.

Q. Mr. Conley present?

A. Well, now, I can't say whether Conley was there or not.

Q. Mr. Case present?

A. Mr. Case was present; yes, sir; I saw him.

Q. Mr. Lennon there?

A. I don't know; I can't tell whether he was there or not; there was so many in there.

Q. What is your recollection?

A. I don't think he was there.

Q. What is your recollection as to Mr. Conley's being there—have you any recollection about that?

A. I have not any recollection at all. I didn't see him if he was there.

Q. You remember distinctly Mr. Case being there?

A. I remember his being there, because I spoke to him.

Q. Was the subject of the order issued by Judge Ricks on the night or the day previous discussed or mentioned to you gentlemen there that morning?

A. Yes; Mr. Canniff spoke about it; yes, sir.

Q. That was a matter of discussion in the meeting, was it not?

A. Yes; I supposed that is what he called the meeting for.

Q. The effect or the substance of the order was communicated to you, or to the engineers present, by Mr. Canniff?

A. Yes.

Q. That was on Sunday, the 12th of March?

A. It was on Sunday. I can't give you the dates.

Q. As I understand, the organization of the firemen, so called, is separate and independent from your engineers?

A. Yes, sir.

112 Q. Was Engineer Clark at this meeting on Sunday, do you remember?

A. I believe he was; now, I ain't positive about that.

Q. That is your best recollection?

A. Yes, sir; I think he was there.

Q. You remember Mr. Case and Mr. Clark being present—that is your recollection?

A. That is my recollection. I think they were both; yes.

Q. Do you know who is the reputed chief of the Brotherhood of Firemen, is that is the term they use for it?

A. Mr. Sargent.

Q. That is the man?

A. Yes, sir.

Q. He was at the same time in conference with Chief Arthur, was he not?

A. Yes, sir.

Q. And remained here during the entire conference during the two?

A. I guess he did.

Q. Did you attend any of the meetings of the Brotherhood before Chief Arthur and Chief Sargent?

A. No, sir; I met them here, in the Boody house and talked with them there some.

Q. You attended no sessions of the chiefs at their room, conference or consultation?

A. No; not in their private sessions or anything of that kind.

Q. In your telegrams to Mr. Cannif—I will read one—that of the 16th of March, you say: "All efforts to effect an honorable settlement of the grievances of the engineers and firemen on the Toledo

Ann Arbor & North Michigan Railway Co. having failed," how came you to mention the word firemen in the message?

A. Because that is the way I had been notified.

Q. It was the engineers and firemen.

A. The engineers and firemen went out together.

Q. You were notified by Chief Arthur and Sargent?

A. Yes, sir; or Chief Arthur. I received nothing from Sargent at all.

Q. You were notified by Chief Arthur of the fact as to the action of both engineers and firemen; that the engineers and firemen would go on a strike?

A. Yes, sir.

Q. How came you to use that expression or join the two?

A. That is the way it was given me, as I said before.

Q. By Chief Arthur?

A. Yes, sir.

Q. In publishing or sending notices to the engineers of this division, you had other methods and ways of notifying them than by personal communication yourself with them, hadn't you?

A. No, sir; no, sir.

Q. Had you between the 12th of March and the 16th of March had a meeting of engineers of the Brotherhood—this division here in Toledo?

A. I think we had; yes.

Q. What was the date of it—how long after the 12th?

A. I can't give the date. I can't remember.

Q. About how long?

A. I can't tell. Maybe it was two, maybe it was three, maybe four days.

113 Q. How long before the 18th or 17th?

A. Two or three days—I can't tell that either. I didn't keep no track of dates at all.

Q. Can you give the court any idea how soon that meeting was called after the 12th of March, the time that you met with Mr. Canniff?

A. No; I can't do it; no, sir.

Q. How many were present at that meeting of engineers?

A. Oh, 15 or 20. I can't tell exactly.

Q. Who called the meeting?

A. The chief engineer, I think, called the meeting.

Q. What chief engineer?

A. The chief engineer of this division.

Q. Who is he?

A. Lathrop.

Q. Personal notice or letter, communications, telegrams, or what?

A. I think he stuck up a notice at Air Line Junction.

Q. You keep records of these meetings—that is, rec-rds of the proceedings?

A. Not of any special meeting that way.

Q. How long did that meeting last?

A. Oh, I can't tell that either.

Q. About how long—five minutes?
A. Well, an hour and a half.
Q. In the daytime or night time? Do you remember?
A. I think it was in the daytime.
Q. Were they Lake Shore engineers?
A. Some of them.
Q. Was the subject-matter of the order of the U. S. court discussed among you?
A. I don't think it was.
Q. Do you remember whether it was or was not?
A. No; I do not remember.
Q. Do you remember whether it was communicated to the meeting?
A. I don't think it was. I don't have any recollection whether it was or not.
Q. You can't say whether it was or was not?
A. No, sir.

Mr. HURD:

Q. At this conference between the engineers and Mr. Canniff on Sunday, you say that the effect of the order of the court was stated to you. What was that effect stated to be? What did Mr. Canniff say the effect of it was?
A. That it compelled them to make the interchange of traffic between the Ann Arbor & North Michigan and the Lake Shore.
Q. What was said ubout its effect upon the right of the men to quit the service of the company?
A. There was nothing said in regard to that.
Q. That wasn't discussed at all?
A. No.
Q. Your attention was not called to that feature of it?
A. No.

Mr. POTTER:

Q. There was no resignations of any engineers at that meeting?
A. No.
Q. Nor proposed resignation, was there?
A. Before Mr. Canniff?
Q. Yes, sir.
A. No; I didn't learn of any.
Q. Was that matter discussed there at all or spoken of or mentioned by any one as to any proposed resignation?
A. I didn't hear anybody make any proposed resignation.

114 Mr. POTTER: We have but one witness remaining. That is Mr. Willetts, who was the conductor of the south-bound train from Detroit, of which Mr. Lennon was the engineer. Mr. Willetts was called yesterday, but proceeded on his return to the performance of his services, as we did not expect that it would be necessary to have him here. We have telegraphed for him. He can't be here until 5 o'clock. We will close with the right to call him as to the

transactions between himself and Mr. Lennon with regard to those messages. That is the only testimony we have.

Mr. HURD: We have no objection to it.

The COURT: Leave will be granted.

Thereupon the defendant The Lake Shore & Michigan Southern Railway Co. rested its case-in-chief.

Testimony on Behalf of Defendants.

Mr. SOUTHARD: We have filed several affidavits; perhaps they might as well be read now as at any other time.

Mr. HURD: I understood your honor to say yesterday that other testimony might be used as well as affidavits.

The COURT: Yes, sir.

Mr. HURD: The affidavits include matters that were presented at the time they were prepared, but they have examined witnesses and developed matters that may render it necessary to recall witnesses.

Mr. SOUTHARD: I understand it to be admitted that the Michigan Central R. R. Co. is a corporation organized under the laws of the State of Michigan.

Mr. POTTER: Yes, sir.

Counsel for defendants read the application under which this proceeding is had. Counsel for defendants then read the affidavit of James Lennon, found on page 21 of this record.

115 LEONARD CLARK, being first duly sworn, testified as follows:

Direct examination by Mr. SOUTHARD:

Q. You may tell the court what your full name is.

A. Leonard Clark.

Q. Where do you live?

A. Air Line Junction, Kibbard Street.

Q. What has been and what is your business or employment?

A. Locomotive engineer, employed by the Lake Shore & Michigan Southern Railway Co.

Q. How long were you in the employ?

A. Going on 11 years.

Q. Up to what time?

A. Up to the 17th day of March, 1893.

Q. What did you do upon the 17th day of March, 1893?

A. I resigned my position.

Q. What had you been doing upon that day?

A. Been asleep most of the day.

Q. You are charged with deserting your engine upon the evening of that day. You may state what time you came to the yards of the company on the evening of that day, if you came at all, and all that happened, in your own way.

A. I can't justly remember the time that I registered my watch. I registered my watch at the clerk's office.

Q. Did you do that immediately upon coming to the yard?

A. I done that when I was going to the round-house. Then, if I recollect right, it was about 3.35—somewhere along there; between that and 4 o'clock, I should think; they called me at 3 for 5.30.

Q. You may state all that happened after you were called, in your own way.

—. I went to the engine-house and looked at what is called the slate, where we are all registered—that is, where we are marked to go out. I noticed my engine jumping the 338. That was the first thing I noticed. I walked to the office, and Hon. Foreman Mr. Bradeen was there, and he had opened an envelope and he says, "Here is a court order." He stood in a position so I could have read it if I saw fit.

Q. You may state whether you did read it.

A. No, sir; I didn't read it.

Q. What did he have, so far as you know?

A. What I heard of his reading was something in regard to Judge Ricks from Cleveland's decision—something about different railroad connections. He handed it to his clerk, Mr. Babcock. He said yesterday that he handed it to his office boy, but I don't know but what he called Mr. Babcock the office boy. He said, "Place that up on the bulletin-board; back about midway of the board." I had been past the board and looked at the board before this. My engine was outside then. I says to Mr. Babcock, "How is it I jump the 338?" He says to me, "We are doing—couldn't get her ready," but I noticed they didn't do no work on her. I went and got onto my engine and done what little work I had around her, filled my cups the ordinary way of business and backed up, and we took water and backed down in the yard. About 5 o'clock I backed away from the water plug. We have an order from the division superintendent we shall leave the water plug 20 minutes before we are due to leave the yard. That time we are supposed to give to the company so as to be ready to leave. They made the train up in the Air Line, on # 10, I think, this time; pulled it down past me. I stood there about 30 feet, I should judge—it might have been 40 feet, it might have been 50 feet—from the track. When they got my train down they put me onto my train. When I got with a car or half a car the conductor came along and handed me orders and clearance card. If I recollect right, I told him I didn't need it; I had quit.

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Q. Where were you then; upon your engine?

A. Yes, sir; stood there in the gangway getting my clothes out of the box—clothes box that we have—and lunch basket. At that time Mr. Horgan, I think his name is, and the yard master stood opposite of him; they told me to back up in order to couple on, and I told them to wait a minute, and then I took my thinks and stepped off of the engine and walked up to the round-house and notified the night foreman that he should call a crew for 420; that I resigned, and also my fireman. He sent a man down and the fireman staid on her until she was — to the water plug or coal dock, out of the way. I went home.

Q. Now, have you related matters and things in the way in which they occurred?

A. Yes, sir; nearly.

Q. How long was it that you had stated that you resigned from the service of the company before you saw Mr. Horgan and Mr. Moore?

A. Well, before—I think Mr. Moore stood opposite the engine. Well, he didn't stand opposite, but stood a little back of the tank, signalling me to back up, when I stopped. The conductor had handed me the clearance card previous to this, when I was backing back, looking for an opportunity to stop and tell them I didn't need it, because I had resigned—I had quit the service of the company. As I was getting off of my engine, Mr. Horgan took the paper out of his pocket. I couldn't justly say what he did say, but he says, I think these are the words: "Mr. Clark, do you understand this?" I says, "I have quit the service of the company," and walked away and had no talk with nobody.

Q. I will ask you whether you did state you had seen that and knew all about it.

A. No, sir.

Q. Or anything of that kind?

A. I had not.

Q. I will ask you whether you had seen it or read it or heard it read before that time.

A. Not the whole of it; no, sir.

Q. I will ask you if you knew the contents of the order at that time.

A. No, sir; in fact, I don't know it to-day—the contents of that paper.

Q. I will ask you whether you ever refused while you were in the service of the company to haul Ann Arbor freight or any other freight.

A. No, sir; never. Furthermore, I didn't know that there was Ann Arbor freight in the train. I will state that I have no
117 way of telling just what is in those cars, nor where it is going—that is, whether I know it is for the Ann Arbor or where it was. I would fully say to the court there was "Alexis" marked on the cars; that is all I know about it. Our companies take cars to Alexis to load them and unload them, and they take them for that other road—the C., W. & M., I think it is.

Q. I will ask you whether you had been advised or were acting in compliance with anybody's orders.

A. No, sir; my own free will. I didn't want no orders.

Q. Or whether you were following—what, if any, plan or arrangement or agreement with anybody or with any engineers——

A. I haven't got any plan.

Q. That you were following out.

A. With no one.

Q. I will ask you if you talked with anybody, if so, with whom, in reference to now hauling Ann Arbor cars or quitting the service of the company.

A. No, sir; I didn't tell nobody I was going to quit until I told the conductor. I told the conductor I quit.

Q. Where was your engine when you left it?

A. Standing onto what they call # 1 Detroit yard—Lower Detroit.

Q. What is # 1?

A. That is in the yard—yard track next to the main track.

Q. It is not the main track?

A. No, sir. It is where they use for making up trains—switching track.

Q. Who was there when you left your engine, if anybody?

A. The fireman, Thompson.

Q. You may state whether he remained with the engine until it was put away.

A. He did.

Q. About what time was it when you announced to the conductor, as you said, that you had left the service of the company?

A. Well, somewhere in the neighborhood of 5.40 or .45, standard time, because I had been to the office and given up my books and notified the foreman that I had resigned—I had quit—and was on my way home at 5.06 when the Kendallville plug went out. That is the way that I could recollect that part of it.

Q. During this time what did your fireman say or do—during the time this conversation was taking place between yourself and others?

A. We did not have no conversation any more than when he seen me taking my things and I told him I quit and he told me to tell them he quit. I says, "You stay with her a few minutes and I will go up and notify the round-house."

Q. Did you have a regular run?

A. No, sir. That don't necessarily of itself mean I have regular runs. We have regular engines if we can follow them, but in freight service we are first in and first out—that is, suppose some man is running locals—I guess the eastern divisions have regular engines on their local freights, but through freight and our division, the Detroit, run first in and first out, freight engines, unless
118 they hold them over for working, and then you jump an engine.

Q. How were they paid?

A. Paid by the mile.

Q. How much per mile?

A. $3.70 a hundred or less constitutes a day. If we run 63 miles, if that is all we do that day, we get $3.70. We allow 100 miles for a day.

Q. On your run that you were then making, when did your time then commence?

A. Commenced at 5.30.

Q. When did your time commence, at 5.30?

A. That is when my time commenced.

Q. When the trip began, you mean?

A. Yes, sir; when I am ordered to leave the yard; that is when my time commences.

Mr. HURD:

Q. The time that you are ordered to depart?
A. Yes, sir.

Mr. SOUTHARD:

Q. The time when you are ordered to leave the yard?
A. Yes, sir; but the 30 is so we can get around and not be detained and have plenty of time.
Q. And what time was it that you were ordered to leave the yard upon this day?
A. 6.30 p. m.; 5.30 p. m.
Q. You say that was the time that you resigned?
A. That is the time that I resigned or near that time. I might have been five minutes late in getting around before they got the train ready for me to get onto. They had to transfer me from one track to the other.
Q. And your engine was not yet on the main track ready for the trip?
A. No, sir; wasn't coupled on.

Cross-examination by Mr. POTTER:

Q. Who was it you first told you quit or resigned from the service of; who was it you first told that to?
A. Conductor Albright, when he handed me my orders.
Q. When he handed — your clearance card?
A. Yes, sir.
Q. Where were you at the time the clearance card was handed you?
A. Was backing down on my train; probably a car or a car and a half from the train.
Q. Had you come to a stop?
A. Had I stopped?
Q. Had your engine come to a stop?
A. I don't know whether she was justly stopped or nearly stopped.
Q. Was the conductor in the cab?
A. No, sir; he was not.
Q. On the ground?
A. On the ground.
Q. What was it you said to him, you resigned or you quit?
A. I resigned from the service of the company. I don't know the order; took my things and got off from the engine.
Q. Before that you had been to the round-house?
A. Yes, sir.
119 Q. In response to the call?
A. Yes, sir.
Q. You had seen Mr. Bradeen?
A. I had seen him; yes.
Q. He had called your attention to an order issued by Judge Ricks?

A. He didn't call my attention to it in particular.
Q. Didn't say a word to you about it?
A. No, sir.
Q. Did you see a notice attached to the order signed by Mr. Canniff?
A. No, sir. *A.* I have not seen it; I have never been near that.
Q. How closely were you to him when your attention was called to it?
A. I told you my attention wasn't called to it by Mr. Bradeen.
Q. What did he say?
A. He didn't say nothing, not to me.
Q. What did he do in regard to the paper?
A. He stood and took this paper. I stood on the outside and he stood on the inside. His desk stood there something like that. I stood right there. He took it out of the envelope and stepped facing me, as you might say.
Q. What did he say?
A. In regard to the order?
Q. In regard to that paper.
A. He read some part of it, and that is all there was to it.
Q. What was it he read to you?
A. I couldn't tell you.
Q. Tell us the substance of what he read to you.
A. I couldn't tell you the substance of it.
Q. How long was he reading it to you; how much did he read to you?
A. Well, I heard him read something about ordering him to obey these laws or something like that effect and handed it to Mr. Babcock to put on the bulletin-board.
Q. How much did he read or how long did he read to you? It wasn't a very great while. He couldn't read a great deal to you?

Mr. HURD:

Q. Had he just taken that out of the envelope then at the time you came up there?
A. Just as I went in the office; just opening the envelope.
Q. That is the first time he had seen it?
A. I don't know whether he had seen it or not. I know he was taking it out of his mail or out of the envelope.

Mr. POTTER:

Q. Did he request you to stop or say that there was something that you should have notice or knowledge of?
A. No, sir.
Q. What did you stop for?
A. I had business with him.
Q. What business did you have with him?
A. I was talking about my engine—the engine that I run—420.
Q. Was that before or after he commenced reading?
A. I think it was about the time he commenced reading it.
Q. Was it before or after?

A. I will not state positively.

Q. Can you state anything that was read by Mr. Bradeen?

A. No, sir; anything more than the heading of the railroad that was attached to it.

120 Q. You say it was a printed paper?

A. I see the back of it; yes, sir.

Q. You didn't see the printed matter at all?

A. No, sir.

Q. You went out into the round-house and got aboard of your engine?

A. I had her out of the house at this time.

Q. You had at this time taken her out of the house, had you?

A. Just backed outside.

Q. Onto what is called the turn-table?

A. No, sir; I wasn't on the turn-table; I stood in the circle.

Q. You and the fireman had boarded the engine, moved her out of the round-house, and then you had gone into Mr. Bradeen's office?

A. I went that way; yes, sir.

Q. Then you came out again and boarded your engine?

A. Yes, sir.

Q. And backed her down to the locality where this train was to be drawn out?

A. When it was time I rung the bell and backed onto the table and took our water and backed down there; yes, sir.

Q. Whereabouts was it that you come to a stop?

A. Oh, a car-length of the train. It might have been a car-length, but a short car; I didn't measure it.

Q. Were you on the same track with the train or on another track?

A. On the same track.

Q. Did you see the cars that were marked Alexis cars?

A. I did.

Q. About how many?

A. They told me that there was seven; I didn't count them.

Q. You didn't ask anybody about the cars—in reference to them at all?

A. No, sir.

Q. Said a word to nobody?

A. No, sir.

Q. You noticed they were Alexis cars?

A. I noticed they were Alexis cars.

Q. Didn't you know that those cars were for delivery to the Toledo, Ann Arbor & North Michigan Railway Co.?

A. No, sir.

Q. Didn't you believe?

A. Well, believing and knowing is two different things.

Q. Didn't you act upon that belief—didn't you believe that those cars were for delivery to the Toledo, Ann Arbor & North Michigan Railway Co.?

A. I didn't believe nothing about it.

Q. Didn't it occur to you that they were for delivery to the Toledo, Ann Arbor & North Michigan Railway Co.?

A. They might have been going to the C., J. & M.

Q. Did it occur to you that those cars were for delivery to the Toledo, Ann Arbor & North Michigan Railway Co. when you saw them marked Alexis?

(Not answered.)

Q. Can you answer the question?

A. You asked me if I believed.

121 Q. Did it occur to you?

A. It occurred to me nothing about it.

Q. Did it occur to you—anything occur to you, one way or the other?

A. I saw them marked Alexis. I went home.

Q. When you saw them marked Alexis what conclusion did you come to as to what railroad they were to be delivered to? What opinion had you—what's your belief?

A. (Not answered.)

Q. Ain't it true that you understood from that and believed from that that those cars were for delivery to the Toledo, Ann Arbor & North Michigan Railway Co. at that time?

A. It might have been delivered to the C., J. & M.

The COURT:

Q. What do you say, Mr. Clark?

A. You want me to testify that they were to be delivered to the Toledo & Ann Arbor.

Mr. POTTER:

Q. Ain't it true that you understood from that and believed from that that those cars were for delivery to the Toledo, Ann Arbor & North Michigan Railway Co. at that time?

A. (Not answered.)

The COURT:

Q. Answer the question, Mr. Clark, as best you can.

A. Well, I have answered it every way that I can. I can't answer it and tell him what I believed, because I didn't know. I have no way of knowing.

Mr. POTTER:

Q. What was your notion in regard to where the cars were going that you saw thus marked?

(Not answered.)

The COURT:

Q. Did you know where Alexis was?

A. I did.

Mr. POTTER:

Q. Did you know that the Lake Shore & Michigan Southern Railway Co. had connection at Alexis with the Toledo, Ann Arbor & North Michigan Railway Co.?

A. Yes, sir; I know they have.

Q. Had you ever hauled freight from Air Line Junction—cars—cars for delivery to the Toledo, Ann Arbor & North Michigan Railway Co. before that?

A. Yes, sir; also the C., J. & M., marked Alexis.

Q. Ain't this true, that when you saw those seven cars pass down there, marked Alexis——

A. I don't say that there was seven.

Q. Well, the car—whatever there was, one or two or more cars—marked Alexis—didn't you believe, and didn't you act upon that belief, that those cars were for delivery to the Toledo, Ann Arbor & North Michigan Railway Co.?

A. That was the same kind of cars they were delivering, and there was some Lake Shore cars in them, if I recollect right; I think some C., L. & W.

Q. (Last question repeated.)

A. In the natural way of believing I might naturally suppose that they were for delivery to the Toledo & Ann Arbor.

122 Q. Didn't you suppose—didn't you believe—at that time that they were for delivery to the Toledo, Ann Arbor——

A. I have no way of believing.

Q. Didn't you act upon the belief that they were for delivery to the Toledo & Ann Arbor?

A. I might have believed that they were going to the Ann Arbor road; I might have believed that all right enough.

Q. Did you see any other cars in the train?

A. Did I see any other cars?

Q. Yes, sir.

A. Yes, sir.

Q. Didn't you believe that they were to be delivered to the Toledo, Ann Arbor & North Michigan railway?

A. I can't say that.

Q. Didn't you believe, if you started and hitched on that train, that you would have to deliver them?

A. Certainly; if I got to Alexis I would deliver them.

Q. I say, didn't you understand that, that if you hitched up to them and started with the train, with those seven cars, that they were to be delivered at Alexis?

A. I understand they were to go to Alexis.

Q. Didn't you understand that they were to be delivered to the Toledo, Ann Arbor and North Michigan Railway Co.?

A. No, sir; I didn't understand that.

Q. When was it you told the conductor you quit, before you saw the cars marked Alexis or after you saw the cars marked Alexis? Do you understand my question?

A. Yes, sir; I think I left her—that I handed in my resignation or quit when I see the cars.

Q. Handed in your resignation when you saw the cars?

A. I didn't hand it in; I just merely quit.

Q. That quitting or resignation was after you saw the seven or less cars marked Alexis backed down on the train?

A. Yes, sir.

Q. You wouldn't have quit the service of the company if those cars had not been backed down on the train, would you, at that time?

A. That is a hard question to answer.

Q. How—why is it?

(Not answered.)

Q. Ain't it true, it didn't enter into your mind—you didn't resolve to attempt to quit the service of the company until you saw those cars marked Alexis that you understood were to be delivered to the Toledo, Ann Arbor & North Michigan Railway Co., and that is the reason why you said "I quit" or "I resign"?

A. I will admit to you, just as I said in my affidavit, that I see the cars marked Alexis; I quit.

Q. (Last question repeated.)

A. In regard to the Toledo and Ann Arbor cars, I didn't know whether or no they was Toledo and Ann Arbor cars.

Q. Is that all the answer you can make to that question?

A. I quit when I see the cars.

Q. Why?

A. I considered that my privilege as a citizen, and surrendered my position.

Q. Did the cars marked Alexis have anything to do with your quitting?

A. Yes, sir; they did.

123 Q. What is it they had to do with your quitting?

A. You asked me why I quit the service.

Q. (Last question repeated.)

A. Because I couldn't obey the orders of the Lake Shore road and hold my job. I couldn't follow my orders and keep my job. I resigned.

Q. You couldn't follow your orders how?

A. Couldn't do what they wanted me to.

Q. Why couldn't you do what they wanted you to?

A. Well, I couldn't.

Q. Well, why? What was it prevented you? What was it they wanted you to do that you couldn't do or prevented you from doing?

A. Couldn't pull that train.

Q. Because it contained Ann Arbor freight?

A. I don't know what it contained, sir.

Q. Well, you believed it contained Ann Arbor freight, didn't you?

(Not answered.)

Mr. POTTER: I think I am entitled to an answer to that question, if your honor please.

The COURT: Yes, sir. You must answer the question, Mr. Clark.

Mr. POTTER:

Q. Well, you believed it contained Ann Arbor freight, didn't you?

A. Believed? Yes, sir; I believed it might — Ann Arbor, as I said before—it might be C., W. & M.

Q. I would like to have an answer to the question, Mr. Clark. You can easily answer it, I think, yes or no, whether you believed that train contained Ann Arbor freight or not.

(Not answered.)

Mr. SOUTHARD: He has answered he believed it to be such freight, and it might not.

The COURT: He has answered both ways.

Q. The question is whether you didn't believe it was Ann Arbor freight and acted—resigned—in consequence.

(Not answered.)

Mr. POTTER:

Q. Didn't your belief as to its being Ann Arbor freight, that you were going to haul Ann Arbor freight, have anything to do with your quitting the service of the company then and there, or resigning?

A. It did at that time; yes, sir.

Q. So now the fact is, no doubt about it, I guess, Mr. Clark, is there, that it was not until you saw the cars marked Alexis put onto this train that you were directed to haul—not until you saw them and believed them to be Ann Arbor freight—that you concluded to quit the service of the company?

A. After I see the cars I concluded to quit; yes, sir.

Q. You hadn't coupled up to the train yet?

A. No, sir.

124 Q. What was the reason that you refused to haul Ann Arbor freight or a train that you believed to contain Ann Arbor freight? What was your reason? What was the reason for your refusal to haul a train having Ann Arbor freight?

A. I didn't refuse to haul no train.

Q. What was your reason?

A. I wasn't coupled to no train; I didn't refuse to haul no train.

Q. What was your reason for quitting or resigning because there was Ann Arbor freight that you believed to be in that train?

A. How did you word that, Mr. Potter?

Q. (Last question repeated.)

A. Because I couldn't pull it.

Q. Why couldn't you pull it?

A. Because I had rather to surrender my position than to pull it.

Q. Because you would rather surrender your position as an engineer on the Lake Shore road than to pull it?

A. Yes, sir.

Q. Why was it; what objection had you to pulling it? What was the ground of your objection?

A. Well, my ground is simply this: that I am pretty near my grave; I can't go through this country and live a scab; that is my grounds.

Q. You say because you didn't want to be called a scab; is that it?

A. That is it, sir.

Q. And you understood, then, that this freight that you saw, or these cars marked Alexis, was what is termed among railroad men scab freight, and you would be called a scab if you hauled a train in which there was what is called scab freight?

A. I might not be called a scab, but my obligation would make me a scab.

Q. (Last question repeated.)

A. Yes, sir.

Q. And you understood at that time that what was called Ann Arbor freight was among railroad men designated as scab freight?

A. Well, in regard to understanding about between railroad men, I hadn't talked with no railroad men.

Q. No; but that was the term you would apply to it?

A. Why, the papers I got my information.

Q. Well, you understood there was a strike on the Ann Arbor road at that time?

A. I did; I saw it in the paper; that is all the information I had.

Q. You had understood it from different sources?

A. Yes, sir.

Q. You didn't propose to haul Ann Arbor freight while that strike was in progress, did you?

A. Not if I knew it, I didn't.

Q. And was the real occasion why you quit the service or resigned at the time you did because you believed that was hauling freight that was called scab freight for delivery to the Toledo, Ann Arbor & North Michigan Railway Co.?

A. I don't justly understand that question.

Q. (Last question repeated.)

A. Yes, sir.

125 Q. Had you up to that time, to the time that you saw these cars, notified anybody or stated to anybody in the service of the company that you had resigned or quit the service of the company?

A. Up to the time that I saw them cars?

Q. Yes, sir.

A. I think I told you that I didn't until I see the conductor. I think he was the first man that I told.

Q. You then quit the engine and went back to the round-house?

A. Yes, sir.

Q. Did the fireman go with you?

A. No, sir.

Q. Did you have any conversation with the fireman at that time?

A. All the conversation I had with the fireman was to look out for the engine a few minutes until I notified the night man—the night foreman.

Q. Did he say anything about quitting for the same reason you did?

A. He told me to tell them that he quit with me.

Q. Now, Mr. Clark, you were one of the engineers that met with Mr. Canniff on Sunday before this—on Sunday, the 12th of March?

A. I think it was the Sunday, the 12th, the caller came down and said Mr. Stevens and Mr. Canniff was going to be at Mr. Whittlesey's office, at Toledo, at 12 o'clock.

Q. You met there?

A. I did, sir.

Q. How long were you there?

A. Well, I was about one of the first there, if I recollect right.

Q. Did you have any conversation with Mr. Canniff at that time—you yourself?

A. No, sir; not individually. I think Mr. Canniff spoke to me. I think him and the division superintendent of the Detroit division set there. I think both gentlemen shook hands with me when I went in. If I recollect, we were there some time around—an hour and a half or two hours altogether. It must have been about a quarter past 11 when I got there, by their clock, and I think it was half past 2 when we went out, but I am not positive as to that.

Q. What was it that Mr. Canniff communicated to you at that time? What was said by him?

A. Well, I didn't justly hear all that Mr. Canniff said. The room was pretty full, and I think Mr. Canniff is here to bear me out in my statement, saying that I set back in the farther corner by being penned in there.

Q. Well, Mr. Clark, Mr. Canniff said to the engineers present——

A. I think them up around him done more talking than them back done.

Q. You heard Mr. Canniff's statement, the substance, to those present as to the occasion of their being called there, didn't you?

A. Well, I don't know justly as I heard Mr. Canniff or Mr. Stevens, either one, give any particular reason why they called us there, but I don't know but what he did.

Q. What did he say?

A. As I said before, I didn't hear all Mr. Canniff said.

Q. Tell us something that he said, the substance of what he said, either he or Mr. Stevens.

A. Well, I don't think Mr. Stevens said much.

126 Q. Tell us the substance of what Mr. Canniff said, if you can.

A. If I recollect right, Mr. Canniff done most of the talking that was done by the officers.

Q. Then you must have heard him.

A. Must have heard some of it, certainly.

Q. State to us something that you heard him say—something in regard to an order of Judge Ricks?

A. I guess—I think it was, if I am not mistaken.

Q. What did he say about it?

A. Well, I am trying to think.

Q. All right; I will give you time.

A. Something about his issuing a circular or injunction or something; I couldn't state exactly the way he did word it.

Q. You understood from what he said there that there was an order issued by the United States court requiring the company and its employés to handle the Ann Arbor freight, didn't you?

A. I understood the way Mr. Canniff's conversation was that that there was an order or something in regard to the Lake Shore Company fulfilling their duties.

Q. Requiring them to handle the Ann Arbor freight, wasn't it? Didn't he state that to you at that meeting?

A. I think Mr. Canniff worded it different from Ann Arbor; I think the connecting lines, Mr. Canniff said.

Q. You knew the Ann Arbor was a connecting line?

A. Yes, sir; I knew the C., J. & M. and I knew the F. & P. was a connecting line on the branch.

Q. You knew, so far as any trouble was concerned, that the order related to the Ann Arbor people, didn't you?

A. Certainly I knew that; yes, sir.

Q. Didn't he say to you, in substance, that the direction of the court was that the company must handle the Ann Arbor freight?

A. Well, I won't say that he said Ann Arbor.

Q. Will you say that he didn't say it?

A. I think he said, as I said before—that is the best of my recollection—connections, lines—connecting lines.

Q. You understood from that that if you were called upon to haul a train having Ann Arbor freight for delivery at Alexis to the Ann Arbor road it would be the duty of the company and its employ-s to deliver it, didn't you?

A. If they staid in the company's service I considered it, but not——

Q. And in the usual course of business you understood that you might possibly be called upon to perform that service?

A. Sure thing.

Q. You had often performed that service?

A. Yes.

Q. You understood if that order was enforced and the company enforced that order you might be called upon to perform that service, didn't you?

A. Yes, sir; if I remained in the service.

Q. Why didn't you resign, then?

A. That is a hard question to answer.

Q. Did you say anything about resigning to anybody at that time—to Mr. Canniff or anybody else?

A. No, sir; not to Mr. Canniff.

127 Q. Did you notify the company that you had resigned or would resign?

—. No, sir.

Q. Did you give them any intimation?

A. No, sir.

Q. Or any notice that you would do otherwise than what was required of the company to do and you as a servant or employé of the company to do?

Mr. HURD: When?

Mr. POTTER: After the 12th of March.

WITNESS: *A.* I think I give Mr. Canniff and Mr. Stevens and Mr. Hand and division superintenent, Mr. Whittlesey—I think that they fully understood that I should be loyal to the organization that Sunday.

Q. That is, at the meeting on Sunday you told them?

A. I think by my remarks, what few words I said, they would naturally drift that way.

Q. What did you say?

A. I don't remember. I told them my sympathy was with the men. That is what I told them. It is pretty much all I said.

Q. How is that? What was it you said? Let me understand the substance of what you said to them. What was it?

A. My sympathy was with the men—the organization that I belonged to.

Q. Now, Mr. Clark, when was it that you first read or saw, either in the printed, published newspapers or otherwise, the order that had been issued by the U. S. circuit court directing the railway company and its employés to handle Ann Arbor freight? When first after the 12th of March?

A. Well, I can't give you the date.

Q. Did you read the morning papers?

A. No, sir; I take an evening paper.

Q. Did you read the Bee?

A. No, sir.

Q. What paper was it you took?

A. Taking the Blade.

Q. So that you took the Blade Monday evening?

A. I wasn't home Monday evening.

Q. Wasn't you at home on the 13th?

A. No; I think I came home that night—if I recollect right, in the night.

Q. Did you notice it first published in the papers?

A. That was the first that I noticed, in the paper.

Q. How soon after the 12th of March?

A. Oh, well, I couldn't state the day or time, but I know it was a Monday paper or a Tuesday paper.

Q. Either Monday or Tuesday?

A. Well, that is the best of my recollection. I think it was the first of the week.

Q. Did you have any meeting of the Brotherhood between the 12th of March and the 16th of March here in Toledo?

A. Of what?

Q. Your division.

A. I don't know, of my division.

Q. Were you present at any meeting here of engineers?

A. No regular meeting; no, sir.

128 Q. Well, at any meeting, regular or irregular?

A. When we left Mr. Canniff and Mr. Stevens we walked up and had a meeting—a short meeting.

Q. And when was that?

A. If we met Mr. Canniff the 12th it must have been the afternoon of the 12th.

Q. Was the subject of the order made by the court a matter of discussion in your meeting?

A. No, sir.

Q. Was there any action taken at the meeting as to what the engineers would do or not do?

A. No, sir.

Q. Going back a moment; after you saw the Ann Arbor car or the cars marked Alexis, and the conductor came down and gave you the clearance card——

A. Didn't give it to me.

Q. Well, offered to give it to you?

A. Oh, that is different.

Q. Handed it to you or passed it to you or towards you—why did you not say to the conductor that you would not haul Ann Arbor freight instead of saying that you would quit?

A. Why didn't I? Because I didn't refuse to haul Ann Arbor freight.

Q. Why didn't you refuse to haul Ann Arbor cars?

A. I quit when the conductor handed me the card.

Q. You didn't intend to haul them, did you?

A. I didn't intend to. I didn't intend to couple onto them. I didn't calculate to couple onto the train.

Q. Of course you didn't intend to haul them. Why didn't you say to the conductor that you refused to haul Ann Arbor freight instead of telling him you quit?

A. Why didn't I?

Q. Yes.

A. The conductor and I had no conversation. I had no reason to say anything to him. He didn't ask me no reason why I quit. I didn't have to tell him.

Q. You didn't say you wouldn't haul Ann Arbor freight; you said, "I quit"?

A. Yes, sir; that is it. I said so.

Q. You say if he had asked him you would have told him?

A. No, sir; you might ask me to-morrow if I was going to New York. I couldn't tell you to-day.

Re-examination:

Q. You spoke about seeing something in a paper the 12th or 13th. Do you know what time that was?

A. No, sir; I just read the heading of a decision of Judge Ricks, of Cleveland.

Q. Did you know anything about the contents of that order from what you saw in the paper?

A. No, sir; I couldn't swear to the paper.

Mr. HURD:

Q. Did you ever understand that this order of Judge Ricks interfered with your quitting the service of the company?

A. No, sir.

JAMES B. CASE, first being duly sworn, testified as follows:

129 Direct examination by Mr. SOUTHARD:

Q. I believe your name is James B. Case?
A. Yes, sir.
Q. Where do you live?
A. Toledo.
Q. How long have you lived in Toledo?
A. About a year.
Q. What has been your employment during that time?
A. As locomotive engineer.
Q. What company have you been in the service of?
A. The Lake Shore & Michigan Southern.
Q. During that whole time?
A. Yes, sir.
Q. Up to what date?
A. Up to the 17th of March.
Q. You quit upon the 17th day of March?
A. Yes, sir.
Q. What time in the day—at about what time?
A. About 7.30 p. m.
Q. Where were you when you quit?
A. I was in the yards at Air Line Junction.
Q. You may tell the court in your own way all the circumstances of your quitting.
A. From the calling?
Q. Yes; all about it.
Q. Well, I was running an engine in the yard—a switch-engine. I come over to relieve a man that was running opposite of me about 5.40 and I relieved him and took charge of my engine that I was running and pushed out a train that went over the main line, and backed down into the yard; and there was another engineer come to me—yard engineer—and told me that he was to take charge of the engine which I had and I was to go to the round-house and take 420. So I went over to the round-house, and I wasn't just fixed for going out on the road and wasn't called for no particular

time, and so I run over to the house where I lived to get ready to go out to make a trip. I didn't have any money with me and thought I might need some; and I come back and I met the night foreman and asked him what I was called for. I hadn't seen no caller nor no time set. He said to make it about 5.40. It was after 6 o'clock when I was called. I hurried right over to the engine to get it ready and I waited there at the engine a little bit for a fireman. I didn't know who was going on, and the fireman came and we got out; went out across the table and filled the tank up with water, and I went down and registered and backed down a little ways from the water plug and stopped there and left the engine there and went over and registered my watch, and when I came back to the engine I found Mr. Sheldon and Mr. Horgan in the cab. I addressed them as I would anybody, backed down onto the train and coupled up. Somebody said, "All ready; let her go." I says, "Who is the conductor?" or "Where is the conductor?" At that the conductor come up into the cab.

Q. Who was your conductor?

A. I couldn't just call him by name.

Q. Albright?

A. I think that it was Albright—and handed me a clearance card. I asked Mr. Albright if we had a through train, and he told
130 me that we had seven cars for Alexis, and seven, I think it was—well, I can't remember any further than that—went on and explained what he had in the train to set out, and I says, "I will quit," and did quit. Mr. Sheldon come up to me and wanted me to wait a minute—I was going to get my coat— and asked me if I had seen or read that law, or something that he had there, and I told him that I hadn't.

Q. That you hadn't?

A. That I had not seen it.

Q. Did you tell him that you had seen it?

A. I told him that I had not seen it. Then he commenced to read it to me. Says I, "It is no use for you to read that to me, because I am not in the service of the company any longer;" and I insisted on getting out of the way, for I didn't want to hold that train nor I didn't want to be in nobody else's way, and he said he would take all responsibility onto himself and went on and read the order, whatever it was—I didn't pay much attention to it—and then they turned round and spoke something to the fireman—what it was I couldn't say. I didn't pay much attention to that. I considered that I wasn't working or anything—had quit before—and told them, if they wanted I should, I would take the engine back to the house, and they said it would be all right for me to take the engine back, and pulled the pin, give me the switches, and I run the engine up to the house. When I left the engine there was a man there to take it, and he took the engine and put it in the house—one of the hostlers.

Q. Did you hear any conversation at all with your fireman—between your fireman and anybody else?

A. Mr. Sheldon spoke something to the fireman. I didn't pay any attention to it. I couldn't answer for what was said.

Q. Up to this time had you ever seen or read the order of the court?

A. No, sir.

Q. Had you ever heard it read?

A. No, sir.

Q. Did you know anything about the contents of that order?

A. No, sir.

Q. I will ask you if in quitting the service of the company you acted in concert with anybody else.

A. No, sir.

Q. Or had you talked with anybody else upon the subject?

A. I did not.

Q. Had you received any order from any person or persons to do it?

A. No, sir.

Q. Or whether you acted in compliance with any order that you knew of or had heard of?

A. No, sir.

Q. Are you a member of the order of locomotive engineers?

A. No, sir; I am not.

Q. You may state to the court how you came to quit at that time—what was your reason for quitting.

A. I simply refused to go out with an engine and take out a train which another man had quit on.

Q. What did you know, if anything, of there being cars in that train billed to Alexis?

A. All I know about cars being billed to Alexis, the conductor told me that he had cars for Alexis.

131 Q. You may state what, if anything, that had to do with your determination to quit the service of the company.

A. Well, sir, I didn't know whether I was hold of the train that I had hold of or not, and when I was told that them cars was in there I thought that that was the train that I had hold of and I wouldn't go then.

Q. Did you have any conversation with your conductor before you told him that you would quit other than what you have already mentioned?

A. No, sir.

Q. Besides what you have already mentioned?

A. No, sir.

Q. Who was your fireman?

A. Kessler.

Q. I will ask you whether before you quit the service of the company you told anybody you had seen this order or had read it or knew anything about it.

A. No, sir.

Q. Whether you had any talk besides that which you have already stated about Ann Arbor cars or Ann Arbor freight or Alexis cars or Alexis freight; have any further conversation with anybody

about the cars or freight? I mean conversation further than you have stated.

A. Not as I can recollect.

Q. Something has been said about a meeting held, I think, upon the 12th of March, at which Mr. Canniff and Mr. Stevens were pr-sent. Do you remember such a meeting?

A. I was at a meeting at Mr. Whittlesey's office on Sunday, a week ago Sunday.

Q. Were Mr. Canniff and Mr. Stevens at that meeting?

A. Yes, sir.

Q. You may state what you learned, if anything, about any order of the court at that meeting.

A. Well, sir, I didn't learn nothing about any court only that I understood Mr. Canniff to say that they had to handle cars with connecting roads and they should take all efforts to do so. I think it was something in regards to that.

Q. But you didn't understand him to say anything about any order?

A. I didn't hear him say anything in regards to any order. I supposed he was just explaining to us what they would do.

Cross-examination by Mr. POTTER:

Q. You understood from what Mr. Canniff did say that some order or orders had been made by the circuit judge regarding the company handling freight of connecting roads?

A. No; I didn't understand it in that way. I didn't understand it to be from a judge. Whether I didn't hear it or whether I didn't understand it I couldn't say as to that.

Q. Do you remember the term there used, the order of the circuit court, injunction, or mandatory order of the circuit court?

A. No, sir; I do not.

Q. From what he told you, you understood that there was some action by which he spoke to you or stated to you and the engineers that it was the duty of the company and the engineers to handle freight of connecting railroads?

A. Yes, sir.

132 Q. And in that connection didn't you understand that there was an order, issued by the U. S. court upon the company, requiring it so to do, and didn't you understand it at that time?

A. I didn't understand where this was from.

Q. You understood there was some such an order on the company?

A. I understood they were placed in such a way by the law that they had to do business with connecting roads; to what extent or by whom, I didn't know.

Q. What, if anything, did you have to say about it at that meeting? Did you say anything at all?

A. Yes, sir.

Q. What did you say?

A. They called on me to speak with the rest of the engineers while we were there.

Q. In substance what did you say to that statement by Mr. Canniff?

A. I don't just understand that.

Q. What did you say—what was it you said in substance—what was it you said at the meeting in response to what Mr. Canniff said or in response to what somebody else said?

A. Why, I told them that; I told them that I was not a member of the engineers—was just a young engineer starting out, and would like to see anything else come on but a strike; but in case that there was anything like that my sympathy would be with the engineers. That is all I said.

Q. You understood from what was said there that the probabilities were that you might then be called upon to haul freight that was termed scab freight; in other words, Ann Arbor freight. You might be called upon to haul that kind of freight shortly, didn't you?

A. Why, the chances would be that I might; yes, sir.

Q. In the ordinary course of your service you had had occasion to haul cars from the Junction to Detroit and deliver cars to the Ann Arbor road at Alexis, had you not?

A. Yes, sir.

Q. About what time did you go to the round-house, do you say?

A. I first arrived there?

Q. Yes; to take your engine.

A. About 6.20 or somewheres along there.

Q. What was the first thing you did after you got there?

A. I went home.

Q. When you got back what did you do?

A. When I came back I came into the round-house and went to the engine.

Q. Did you stop to examine or look at the bulletin-board at that time?

A. I didn't stop to examine it particularly; I walked by the board.

Q. Did you look at it?

A. I looked at it; yes, sir.

Q. Both times—the first time or the second time or both times?

A. I only passed it once.

Q. At the time you passed it?

A. I glanced up to the bulletin-board. It was so dark there that I couldn't see nothing if I had.

Q. Did you have a lantern with you?

A. No, sir.

133 Q. Was there a lantern handy by?

A. No, sir.

Q. Could you have got a lantern without any trouble, or light?

A. I could have got a torch by going over to the engine.

Q. Your duty is to go to the bulletin-board; suppose you know

you can't see, what do you do, whether to get a light to see what is on it?

A. Well, I didn't see nothing on there that I thought was interesting me in particular; in fact I couldn't see what was on there really.

Q. Could you see anything on it?

A. I could see there was orders there; I didn't know whether they had been there for a week or month.

Q. You couldn't tell anything about it?

A. No.

Q. That is the only inspection you made of the bulletin-board, was it?

A. That is the only inspection I made of the bulletin-board.

Q. Did you notice any new order recently posted there—did you see any printed matter?

A. I didn't notice anything that looked to me as though there was anything new there.

Q. You say it isn't light there?

A. No, sir; it is not.

Q. How is the engine-house lighted?

A. The engine-house is lit with kerosene lamps fastened on the walls.

Q. Reflectors?

A. Yes, sir.

Q. Is there any trouble in getting around and seeing what is going on in the engine-house?

A. It is pretty dark around through the engine-house.

Q. Where the bulletin-board is?

A. It is pretty dark on the bulletin-board.

Q. You say you can't see what is on the bulletin-board from the light that is ordinarily there at night?

A. Yes, sir; I can't see what is there.

Q. How is it you inspect or learn what is on the bulletin-board when you come there at night?

A. Well, they most generally—I don't know; I haven't got out in the night-time very much; I am not a regular man on the road; I am working in the yard principally, but when I am——

Q. You have been there nights and seen the bulletin-board nights?

A. I did that night; yes.

Q. Did you ever read that at night?

A. I always watch the bulletin-board during the day.

Q. Did you ever read the bulletin-board at night?

A. Yes, sir.

Q. How did you read it?

A. I read it by a light that a man happened to have around with him and——

Q. How many times have you read an order on the board at night?

A. Not very many times.

Q. Your duty is to go to the board and see and examine?

A. Yes, sir.

Q. If you can't see your duty is to get a light and examine?

A. I suppose that a man had really ought to.

Q. You understood the rule of the company, that you must examine and look at the bulletin-board to see what the orders were there, didn't you?

A. That is the rule of the company; yes, sir.

134 Q. You got onto your engine and backed down into the yard, is that it?

A. Yes, sir.

Q. Coupled up to this train?

A. Yes, sir.

Q. Ready to proceed on your way?

A. Yes, sir.

Q. And the conductor came along and passed up to you the clearance card?

A. No, sir.

Q. The conductor came along to where you were?

A. The conductor came up into the cab and handed me the card after I asked him—where I was.

Q. That was what you call the clearance card?

A. Yes, sir.

Q. Then you asked him if there were any Ann Arbor cars in the train—Alexis' cars?

A. No, sir; I asked him if we had a through train.

Q. Why did you make that inquiry?

A. For to find out to my knowledge whether that was the train that the man that had quit before me had hold of.

Q. Who was the man that quit before?

A. Mr. Clark.

Q. Did you have any conversation with him?

A. No, sir.

Q. How did that indicate to you whether it was a through train or not, whether it was the train he had hold of or not?

A. I simply asked the question if it was a through train. I asked a question whether it was a through train we had and he told me we had seven for Alexis.

Q. How is it that the question you put to him—"Is this a through train?"—how did that indicate to you that it was the same train the other man ahead of you had refused to haul or quit on?

A. I don't know nothing about that man's business, but I supposed that maybe that there were Ann Arbor cars might be the cause of his quitting. I didn't know, but I thought.

Q. You had reason to believe for some cause that the man ahead of you quit because there were Ann Arbor cars in the train?

A. I thought maybe that might be it.

Q. That is the reason you asked if that was a through train?

A. Yes, sir.

Q. The conductor told you there were cars in it—what are called Alexis cars?

A. Yes, sir.

Q. You understood there were cars in his train that were for delivery to the Ann Arbor at Alexis, didn't you?

A. I supposed they were.

Q. Wasn't that the reason you quit?

A. No, sir. I have told you once why I quit.

Q. Wasn't that the reason you quit?

A. No, sir; it was not.

Q. Because you were directed to haul or were to haul cars having Ann Arbor freight in or a train having Ann Arbor cars—wasn't that the real reason of your quitting?

A. No, sir; that was not the reason that I quit.

Q. Suppose they hadn't been Ann Arbor cars, would you have quit?

A. No, sir.

135 Q. Do you remember whether anything was said to you by Mr. Sheldon or somebody else in the cab of the engine in reference to if the Ann Arbor cars were taken out that you would then perform the service and haul the train?

A. There was not.

Q. Nothing of that kind said to you?

A. Nothing of that kind.

Q. If these cars had been switched out you would have taken the train?

A. I would not then.

Q. If they had been switched out before you asked the conductor you would have taken it, wouldn't you—would have taken the train and gone on your way, wouldn't you?

A. Yes, sir.

Q. And it was because there were Ann Arbor cars or cars for delivery to the Ann Arbor road that you quit?

A. No, sir; I didn't quit for that cause.

Q. What was the reason?

A. I told you once.

Q. Let us understand again.

A. I *wuit* because I wouldn't take an engine and pull a train which another man had quit on before me.

Q. Why not? You didn't know the reason of his quitting. He might have been taken sick.

A. No; I didn't know the reason of his quitting because I didn't want to.

Q. Has that been your custom and habit where a man for some reason or other leaves a train and you are called upon to perform the service, do you refuse to haul the train because he has refused to haul it or don't haul it for some reason?

A. I don't just understand you.

Q. (Last question repeated.)

A. It does in a case of this kind.

Q. Why in a case of this kind more than in an ordinary case?

A. Because I simply think that that man knew his business and knew what he was doing, and I wouldn't take his place.

Q. Is that the answer to the question, the only answer you want to give?

A. Don't that answer the question you asked me?

Q. Why didn't you say to the conductor when he informed you that there cars in the train marked Alexis or for Ann Arbor delivery—why didn't you say to the conductor that you quit for the reason that there were Ann Arbor cars in there or that you——

A. I had no occasion to.

Q. Why didn't you tell the conductor the reason why you wouldn't haul it—because the other man had quit ahead of you?

A. He didn't ask me.

Q. That was the reason?

A. He didn't ask me the reason why; I didn't tell him.

Q. If he had asked you the reason why you didn't haul the train would you have said to him, "Because the other man didn't haul it"?

A. I don't know what I would have said.

Re-examination by Mr. HURD:

Q. You say that you would have hauled the cars if these Ann Arbor cars had not been there?

A. If they had not been on the train at all; yes, sir.

Q. You would have done that, I understand you, because you would have known from that that that was not the train that Mr. Clark had refused to take out?

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A. Yes, sir.

Mr. POTTER:

Q. How would you know that; how would you know from that fact, circumstance, that? You had had no talk with Mr. Clark?

A. No, sir.

Q. You didn't know anything about whether this was the train or not that he hauled or was to haul?

A. I thought if it had been a through train and everything had been all right Mr. Clark would have went himself.

Q. You didn't know the occasion of his not hauling it; he might have been sick, for aught that you knew?

A. I took them chances.

WILLIAM RUTKER, being first duly sworn, testified as follows:

Direct examination by Mr. SOUTHARD:

Q. Your name is William Rutker, is it?

A. Yes, sir.

Q. Where do you live?

A. Toledo, Ohio.

Q. How long have you lived in Toledo?

A. This last time, since the year 1881. I have lived here before that; was born here, but was gone several years, and come back in '81.

Q. What is your business or calling?

A. My business is running a locomotive of late, for the last year or a little over.

Q. For the Lake Shore & Michigan Southern Railway Co.?

A. For the Lake Shore & Michigan Southern Railway Co.

Q. How long have you been in the service of the Lake Shore & Michigan Southern Railway Co.?

A. About 10 years.

Q. And when did you discontinue your relations with the Lake Shore Co., if at all?

A. The night of the 17th day of March.

Q. The night?

A. Yes, sir.

Q. Of the 17th?

A. Yes, sir.

Q. What time?

A. Well, it was about 10 o'clock or a little after; half after, or somewheres along there; I couldn't tell the exact time.

Q. What had you been doing during the day of the 17th?

A. Running a switch-engine; taken my regular engine in the yard from 6 o'clock in the morning until 7 o'clock at night.

Q. Then what did you do after that?

A. Went home and went to supper. I was getting ready for bed when the caller come to the house and notified me for an extra, but give me no time—set time for the extra—or anything about it. I asked him. He called me for extra engine 420. I says, "What time?" He says, "No time set. Will you go?" I studied and I says, "Yes."

Q. Then what did you do?

A. Went to the Junction. I lived down town.

Q. You may state all that happened from that time up until the time that you quit the service of the company.

A. I went to the Junction, to the round-house; went to the engine, looked on the engine, seen somebody on the engine; turned around and went towards the slate; was going to look at the
137 slate and bulletin-board. I met Mr. Bradeen. He had a time card, and he says, "Here is a time card; are you all ready to go?" I says, "Mr. Bradeen, what is the trouble? There is something wrong. When was this train there first ordered or called for? Has there been anybody quit on this train or hasn't there?" He says, "I don't know as that is any of your business." "Well," I says, "it is my business." I says, "I won't take no man's place without knowing what reasons." "Well," he says, "You don't know the law. Come in," he says, "I will show you the law." I says, "I will quit before I do that." Did I get that in?

Mr. POTTER: No; you didn't get that in.

WITNESS: "Before I would take another man's place without knowing the reason," and he called me into the office, then handed me a slip of paper, which I took it and looked over it, and I says, "I don't see anything that prevents me from quitting in that."

Mr. SOUTHARD:

Q. That is while you were reading a paper where?

A. In Bradeen's office, at Air Line Junction; and then he asked me, "What grounds do you quit on—handling Ann Arbor freight?" I says, "No, sir; I quit in taking other men's places." As near as I think, them is the words I used. But that is the meaning—that is what meaning I meant. "Well," he says, "you don't know as you are going to take another man's place." He says, "You may not take that train. I don't know what train you are going to take." He says, "Won't you take the engine out in the yard?" I studied. By that — Case come in. I didn't know the reason, and I didn't know what was up. I wanted to be enlightened and I spoke to Case. Case says, "I won't say anything—give no advice." He says, "I took my own steps and you can do the same, if you wan't to." He says, "I don't know whether I done right or wrong." I walked to Bradeen. I says, "I will take the engine out." We went over to the register office and took time. With that I went to the engine and says to the fireman, "I am ready." He rung the bell, got out to turn-table, took water. After taking water, called for the switches as we generally do; started out. As soon as I called for switches the cab begun to fill up with men. I got down to the round-house switch; began to fill up with men.

Q. Men began to get in the cab?

A. Yes, sir; when I got down to the round-house switches.

Q. Who were they?

A. I couldn't say who they all were. I spoke up and says, "All these men." I says, "I don't know as I am obliged to have this cab full of men," or some remark of that kind. Then Mr. Sheldon spoke and said, "I guess we have got a right to ride," or something of that sort. "Well," I says, "I don't know as I ever saw anything in the book of rules that compels a man to have a cab full of men
138 without reasons," or something to that effect. But they stepped back. I started back with the engine—recognized him as an officer of the road. I had authority then not to say any more. When I got down to the puzzle, why, there was confusion in the cab, and I had to speak to the fireman two or three times before I could get him to understand what I wanted of him and to recognize—to attend to his business on his side—whether it was safe to go over that puzzle. I backed down onto the train then, and the conductor come and handed me a clearance card and compared time, and he says, "Are you ready?" I says, "Yes; what are you got there on the train?" He says—now, I forget; I won't say positively whether it was seven or eight cars for Alexis. "Well," I says, "I will quit here." I says, "If you want the engine any place I will take her wherever you want to." With that Sheldon jumped onto me. He says, "Here, Jim"—or whatever he said—"Rutker, don't be hasty; you may be sorry for this action." I says, "No; I won't." He says, "Do you understand the law?" I don't remember whether I answered him I did or not; and then Mr. Sheldon asked me, if he would switch out the Ann Arbor cars, whether I

would go or not. I studied and thought whether there was any clause they had on me; finally answered him, "No; I have got my foot where you want it and I have quit."

Q. Up to this time had you ever seen or read the order of the court—what is called the mandatory order of the court—in this case?

A. I had not.

Q. I mean up to the time you went into Bradeen's office?

A. No, sir; the first paper that I ever seen of the kind.

Q. Did you understand it?

A. I don't know as I did, but it hadn't anything which prevented. I looked through it. I didn't think there was anything in there that prevented me from going out of the service of the company—that is, that I could see; to my knowledge.

Q. I will ask you if you are a member of the Brotherhood of Locomotive Engineers.

A. No, sir; I am not.

Q. Were you ever?

A. No, sir; I wasn't ever.

Q. I will ask you if you acted in what you did there in compliance with any orders or instructions from any organization or any board of engineers or——

A. No, sir.

Q. Or body of engineers.

A. No, sir.

Q. I will ask you if you had talked or had any communication with anybody on the subject of handling or not handling Ann Arbor cars or quitting or not quitting the service of the company.

A. No, sir.

Q. Whether you ever heard——

A. With the exception of with Case. He gave me no instructions whatever.

Q. Did you read any orders or instructions?

A. No, sir.

Q. In respects to the subjects named?

A. No, sir.

Q. What did you do after that?

A. After that?

139 Q. After quitting the service of the company, what did you do?

A. I took the engine where Mr. Bradeen told me to take it, put her on the center, shut off her throttle, saw that there was plenty of water in her, opened her cylinder cocks, and put on both heaters, so that the engine would be safe until the fire died out.

Q. What did you put on heaters for?

A. In case she got cold she wouldn't freeze the tank or injectors wouldn't freeze up and bust up anything. Then I went to the roundhouse and handed in my book of rules, my switch-key, and my pass which I had with me, and told him that the rest of the books that I had belonging to the company I would send the first opportunity I had. That was an air-brake book, as it is called, an instruction

book for the air-brake, and the steam-heater book and the Chicago-yard book. They was to home. I told him I would hand them in the first chance I got, which I did afterwards; sent them up by the caller; I met the caller and give them to him.

Q. Were you at that meeting that has been spoken of?

A. No, sir; I knew nothing of it; I had heard nothing of it.

Cross-examination by Mr. GREENE:

Q. Did you take a daily paper during last week?

A. I took the Evening Bee; yes, sir; but I don't always read it; don't always have time to read it in the evening.

Q. Weren't you considerably interested last week in reading the evening paper to see what was going on?

A. No; I don't know as I was any more than every day.

Q. Did you read it last week?

A. I don't know as I read it every evening last week; I might; I might not; that is something I can't answer.

Q. If you think a moment you may be able to answer whether or not you did read any evening paper last week?

A. I can answer this, that I never saw that article in any newspaper.

Q. If you will kindly answer what I ask you, instead of answering something else, you can get along with me rapidly. I simply want to know whether or not any evening of last week you looked into or read a Toledo evening paper.

A. That is something I can't answer; I don't know whether I did or not.

Q. Do you remember where you were Thursday night or the night before?

A. No; I don't.

Q. Were you at home every evening during the week?

A. No; not always.

Q. Where were you every evening during the week when you were not at home?

A. I can't tell you every evening where I go to, nor where I have been for the last year.

Q. Understand, I don't ask you about last year; it was last week.

A. You asked me away back about evenings; I don't keep track of where I go, one week or a year.

Q. Do you remember any place that you went last week?

A. I often go to the grocery store.

140 Q. I don't ask where you often go. Do you remember any place where you went last week?

A. No; I don't in particular.

Q. Did you meet any number of railroad engineers any evening last week?

A. No, sir; I did not.

Q. Did you have any information from any source last week?

A. To quit? No, sir; I didn't.

Q. What do you mean?

A. I didn't have no informations whatever with regard to anything about this strike.

Q. I didn't ask you that.

A. Well, I knew what you were going to ask.

Q. Did you have any information from any source prior to Friday evening of last week that there was any trouble on the Ann Arbor road?

A. Yes, sir; I understood that there was.

Q. What was the source of your information?

A. Well, I saw that in the papers, and I saw it—I heard it on the street.

Q. When did you see it in the papers?

A. Well, that I couldn't say. I couldn't tell you just when.

Q. Where did you hear of it?

A. Well, you could hear that any place in the yard, in the Lake Shore yards—different parties.

Q. You heard that there was a boycott, didn't you, of Ann Arbor freight along about the 7th?

A. No, sir; I did not.

Q. About the 7th, didn't you?

A. No, sir; I knew nothing about it. Oh, about the 7th?

Q. Yes.

A. Well, as far as knowing it, I have no knowledge of knowing it, whether there was or not.

Q. Oh, no; I am not asking whether you knew anything; I am asking whether you heard anything about it or had any information about there being a boycott of that road about the 7th.

A. That is something—I don't know as I heard it in that way. I knew that there was trouble on the Ann Arbor road, but I don't know, as far as the boycott was concerned.

Q. Did you hear about there being a proposition or suggestion or order or anything on the subject of Lake Shore engineers not handling Ann Arbor freight?

A. Not by me. I didn't know anything of it.

Q. Did you hear anything about it?

A. No; I didn't.

Q. When was the first that you understood that there was any talk even of a boycott of Ann Arbor freight?

A. I didn't know anything of it.

Q. Have you heard anything of it down to the present moment?

A. Nothing; only what I heard—what I heard here.

Q. Did you know anything of it until you came here and heard something about it here?

A. That is something I don't know. I don't remember.

Q. Do you mean to say, sir, that you don't know that you ever heard anything on the subject of a boycott of Ann Arbor freight until you came here to this court-house?

A. I have never heard of it. I might have heard of it, but I didn't know whether it was or not.

141 Q. Did you hear anything said or have any information

about it? You say you might have. I wouldn't ask the question if it was impossible that you should have.

A. I might have.

Q. Well, did you?

A. Ain't that answering it?

The COURT: That is not answering it.

Mr. GREENE:

Q. Did you at any time before you came to the court-house in this proceeding have any information from any source concerning a boycott or proposed boycott of Ann Arbor freight or cars?

(Not answered.)

The COURT: When you say you might have that don't answer whether you did or not. If you mean by that that you probably did that would be an answer, if you put it in that way; but you answer saying that you might have heard it doesn't answer the question one way or the other. What is your best recollection?

A. I couldn't answer whether I did or not. I probably did.

Mr. GREENE:

Q. You can say that you are unable now to say that until you came here to the court-house in this proceeding you ever heard anything on the subject of such a boycott. Are you able to bring to mind any information that came to you on that subject prior to that time?

A. I have no reasons of knowing definitely, though, with the exceptions of the actions of those men up before me.

Q. Did any one talk to you or you talk to any one on the subject before coming here in this matter?

A. What do you mean on the subject—talk to anybody on what?

The COURT:

Q. The boycott or boycotting.

A. No, sir.

Mr. GREENE:

Q. Or the refusal to handle the interchange traffic of freight or cars with the Ann Arbor—anything on that subject?

A. No, sir.

Q. You never had any conversation with anybody—no one ever said anything to you upon the subject nor any one to you—until after you came here—until you came here to court in this proceeding? You mean to be so understood as testifying?

A. Why, I understood that there was a trouble, but what it was I didn't know.

Q. Did you say anything to anybody or anybody say anything to you upon that subject—trouble or boycott or refusal to handle freight? It has been explained. It is unnecessary to put it in every question.

(Not answered.)

The COURT:

Q. The question is whether you talked to any one or had
142 any one talk to you on this subject of refusing to handle Ann Arbor freight?

A. No; I didn't have no conversation with any——

Mr. GREENE:

Q. Did you read anything touching that subject in print or in writing?

A. Why, I answered that once.

Q. Answer it again, please.

A. I told you I saw it there at the time Bradeen had it.

Q. Ever anything before that?

A. No, sir.

Q. Nothing on that subject?

A. No, sir.

Q. So it had run along here for a week or more, this trouble and these negotiations, and you had never heard anything about it at all?

A. ——.

Mr. HURD: He never said that.

Mr. GREENE:

Q. No; you had never heard anything or read anything touching any boycott or refusal to handle Ann Arbor freight?

(Not answered.)

Q. Was it a paper like this I show you that was shown to you there at the round-house on Friday night? (Hands witness Caniff circular and mandatory order of this court in this case.)

A. I suppose it was.

Q. Will you look at it and see so we will have no doubt about it?

A. It was, I should judge.

Q. The notice by Mr. Canniff and printed copy of the order by this court?

A. Yes, sir.

Q. A judge of the court?

A. Yes, sir.

Q. Interstate-commerce law? You read there, did you?

A. I looked over it. I don't know whether I read it all or not.

Q. Were you requested to read it?

A. I was asked to read it.

Q. You took it for that purpose?

A. I did; looked at it.

Q. You took it for the purpose of examining it and knowing what it contained, did you not?

A. I looked at it; yes, sir.

Q. Did you take it for the purpose of examining to ascertain its contents?

A. I did, in regard to me quitting.

Q. What brought the subject of your quitting to your mind right then and there?

A. Because I didn't want to take another man's place?

Q. What did you know about taking another man's place at the time that this paper was handed to you?

A. I knew it.

Q. How did you know it? What information had you and from whom?

A. Why, through Case.

Q. When and where did you get that informatiom from Case before this paper was handed to you? He was right there before this paper——

A. Before or after, it was about the same time I had that paper.

Q. No, no. But before this paper was handed to you had you any conversation with Mr. Case?

A. No, sir.

143 Q. Did you have any conversation with him until after you had returned this paper to the man that handed it to you?

A. What is that question?

Q. Did you have any conversation with Mr. Case?

A. No, sir; I did not.

Q. Until after you had returned this paper to the man that handed it to you?

A. No, sir.

Q. Then you didn't ger the information from Mr. Case that led you to want to examine this paper with reference to quitting, did you? You had had no talk with him?

(Not answered.)

Q. Where did you get any information, or what did you have in mind, that led you to examine that paper with reference to your right to quit?

A. Mr. Bradeen asked me to look at it.

Q. What did he say?

A. When I told him in the round-house that I would quit before I would take another man's place I asked him what the trouble was.

Q. Had you seen this paper?

A. No, sir. He took me in his office and showed it to me.

Q. What information had you about taking any other man's place at that time? Who suggested anything to you on that subject?

(Not answered.)

Q. Up to the time that this paper was handed to you who had suggested anything to you on that subject?

(Not answered.)

Q. Had any one?

A. Not in particular; no.

Q. Well, in general, or in the aggregate, or any other way?

A. Nothing, with the exception when I rode up from down town on a train there was a man told me that—" When you strike that yard," he says, " there has several men quit on that train."

Q. Who told you that?
A. I don't know the man.
Q. Did you ever see him before?
A. No, sir. I might have.
Q. Did you ever see him since that?
A. I might not. I couldn't say.
Q. Stranger to you?
A. Stranger to me; yes, sir.
Q. Did you have any more conversation?
A. No, sir; I did not.
Q. What train did you go up on; on a freight train?
A. No, sir.
Q. Did you ask him in particular about it?
A. No, sir.
Q. What time was that?
A. It was after I was called. I was called at 9.20, or whatever time it was.
Q. Where were you when you were called?
A. Home.
Q. How far is that from the round-house?
A. Well, I should judge in the neighborhood of between two and three miles.
Q. You were here in town?
A. Yes, sir.
Q. You went down and took a train and went out to the Junction, did you? How did you go to the Junction?
A. Jumped on a train that come by St. Clair Street bridge.
Q. What conversation did you have with this man that you speak of?
A. I didn't have no conversation until I struck Air Line Junction.
144 Q. Then what? Tell us what was said. Tell us just as readily and quickly as you told them what was said a few minutes ago. Go on and tell us what it was. It wasn't any longer ago than that conversation you gave so readily.
(Not answered.)
Q. Will you kindly go on? We are all waiting. You gave us with the greatest particularity a conversation that occurred within five minutes of that time. Now put on your thinking cap and tell us what the conversation was you had with this man.
A. I told him I was called in a kind of a peculiar way.
Q. What was it?
A. Says I, "I wonder what the rumpus is." "Why," he says, "there is a train up there that several has refused to go out on."
Q. That was an entire stranger to you?
A. Yes, sir.
Q. What else was said?
A. That was all that was said, to my knowledge.
Q. Are you sure it was all that was said?
A. I don't know of anything else that was said.
Q. Did you ask why they refused?

A. No, sir; I did not.

Q. Did you have in your mind any idea of what might be the cause of the refusal? Didn't you know—weren't you satisfied in your own mind because there was Ann Arbor freight in the train?

A. Why, that would naturally lead me to think so. That is the reason of asking the question. I supposed it was so. I wanted to know whether it was so or not.

Q. But nobody said it was so, but that is what you believed?

A. That is what I believed, but nobody said so.

Q. It was sort of in the air, and you believed it, at any rate. Then from there where did you get off and leave this stranger after this conversation? What was your next movement?

A. Went to the round-house.

Q. Who did you see there?

A. Saw Bradeen, the first one.

Q. Had you had any conversation with anybody or any information from any source after this conversation with the stranger until you met Bradeen there?

A. No, sir.

Q. What was then said and done—the first thing that transpired between yourself and Bradeen?

A. He was in the round-house; met me in the round-house with a time-card.

Q. What was said?

A. He wanted me to go, and says, All ready to go? I says, "What is the trouble here?" I says, "There is men leaves on this engine. I don't take another man's place." I says, "I will quit before I do." Then he called me to the office to see this law.

Q. What was there in the situation that led you to deem it necessary for you to protest that you would quit before you would go instead of simply saying, "Why, I don't want to do this"? Why did you say it right then and there so promptly?

A. Because I didn't want to fill another man's place—take a train that another man had refused.

Q. Did you ever take a train that another man had declined to take?

A. No, sir.

145 Q. Suppose a man had declined to take this train, or two or three men, from some cause other than that it contained boycotted freight, or Alexis, if you please, or any such cause as that, or an engagement somewhere—wanted to go away and get married, or something of that kind—would you then say that you would quit before you would take that train?

A. I don't know as I would.

Q. But what you meant to be understood was and had in mind was that you would quit before you would take a train that had boycotted freight in it that another engineer had refused to haul; isn't that it? That was it exactly, wasn't it?

A. I quit because them fellows quit.

Q. And they quit because there was boycotted freight in the train;

that was it, wasn't it? That was one of the elements that operated on your mind?

A. I ain't got nothin to do with the boycott.

Q. Suppose they had declined on account of illnes or to go to church or to see a wedding or something or other—two or three happened to have arrangements so they didn't want to go—and would say, "I won't take that train; I have got something else to do," that wouldn't have prevented your taking it, would it?

A. No, sir.

Q. But it was a fact they had refused to take it in consequence of its having this Ana Arbor freight in it, wasn't it? They having refused for that reason, you would refuse for the same reason. Wasn't that what was in your mind—what influenced your action?

(Not answered.)

Q. What do you say?

(Not answered.)

Q. You can answer very easily yes or no. Answer it very easily yes or no.

The COURT: Answer the question.

WITNESS: I want to answer it right. My principal object is not to take another man's place where he has got reasons to refuse.

Mr. GREENE:

Q. Where his reason is that there is boycotted freight in the train—where he refuses for such a reason as that, as you understood to be the fact in this case—you would refuse to take it; is that what you mean?

A. I guess it is.

Q. Taking this right up where you left it: You came in there and you made the remark that you have stated, that you would quit before you would take another man's place. Now, we have found out just what you mean by that. What next was said by you or Mr. Bradeen there at the office? He said that he had a paper that he wanted to show you, didn't he?

A. Yes, sir; that was the next thing that was said.

Q. Did he say it was an order of the court?

146 A. Why, I didn't say anything about boycotted freight the first time when I spoke. I told him I wouldn't take another man's place where other men leaves.

Q. I understand that. We have gone on to see what was in your mind and what led you to think that. Now, we have gone on with another conversation. What then did he say about this paper when he handed it to you?

A. I forget the exact words he used.

Q. Just the substance of it. Of course, I don't suppose that you can give the exact words.

A. He said he had something in his office to show me.

Q. What next? Go right along as fast as you can.

A. I have answered them questions once.

Q. I am asking you now.

A. I am not supposed to answer these questions half a dozen times.

Q. No; I only want you to answer this once. You went on in a narrative way. I am simply cross-examining. I want to know a little more about it in detail.

A. You asked me the same thing.

Q. No; I told you that he handed me the paper, and that I kind of looked it over.

—. ——.

Q. Will you kindly look at that, and see if you recognize that notice of Mr. Canniff's? (Hands witness paper.) You read all of that?

A. I looked at it.

Q. Did you read all of it, of Mr. Canniff's notice?

A. I glanced it over in a hurry.

Q. Did you read all of it?

A. That is something I couldn't swear to whether I read every word of it or not.

Q. You had the opportunity to read it all?

A. Yes, sir; I did.

Q. You read enough of it so that you understood it, as you then believed?

A. As I believed.

Q. You examined that paper, giving it a sufficient examination to know and understood its contents, didn't you—the whole paper or whole document that he gave you? That is what you undertook to do when you took it and while you were examining it, was it not? You can answer that. You know whether it was or not.

A. He handed it to me; yes, sir; I could have had time to examine it.

Q. You had it in hand and had time, as you believe, and examined it sufficiently to know what it contained or to understand it, didn't you?

A. Yes; I didn't think it had anything to do with me. I could quit or go.

Q. You examined it so that you were able to judge what it did not require, did you?

(Not answered.)

Q. So that you were able to say that "There is nothing in that paper that would prevent me from doing so and so." You examined it sufficiently to satisfy your own mind to that extent as to the contents of the paper?

A. Yes, sir.

Q. You did examine it carefully and know all that was in
147 it, didn't you, in order to know that it did not prohibit a certain thing? You did so examine it, didn't you?

A. Yes, sir; I looked at that paper.

Q. Well, you examined it to that extent, so as to know what it did not prevent? What do you say?

(Not answered.)

Q. Wh-n did the idea first enter your mind that you would resign and quit the service of the company?

A. On the evening of the 17th of March.

Q. Before or after you had read that paper?

A. I had made up my mind to quit before.

Q. How long before?

A. When I met Bradeen in the round-house; that I could not say; probably only a short time—a few minutes before.

Q. Did the fact that there was a boycott upon the Ann Arbor business have anything to do with leading you to that conclusion? What do you say?

A. Why, it did; w-ere other ones refused.

Q. Suppose no one had refused; you went there and found that there were five or six or seven or more or less Ann Arbor cars in that train, leaving out of view the fact that anybody had refused to haul it, wouldn't you have quit yourself the same?

A. No, sir.

Q. You would have hauled it, would you?

A. I would have went.

Q. You would have hauled it?

A. Yes, sir.

Q. Why?

A. Because I wouldn't have had no way of knowing it.

Q. But if you had known it? I am assuming now, suppose you had gone there and nobody had refused to haul that train, and Mr. Bradeen said, "Here is a train I want you to haul to Detroit; it has got seven Ann Arbor cars; I want you to get it at the Junction, and I want you to take it and haul it down there," would you have taken it or would you have quit, just the same?

A. I don't know whether there was Ann Arbor cars or not.

Q. No, no; but I say, assuming that you did know, you would have acted just the same, wouldn't you? No matter how the information came to you, if you knew it from the fact that somebody else refused to haul it, or if you knew it from seeing the cars in the train, or knew it from being credibly informed that they were there, in either case, you wouldn't haul it as scab freight, would you, but would quit. Isn't that so?

A. I had nothing to do with boycott directly——

Q. No; just answer my question.

A. I quit because I didn't want to take an engineer's place when he went out.

Q. We have had that repeated times enough; it is unnecessary to repeat it again. My question now is, in case no engineman refused to haul that train, it had just been made up, and no engineer summoned, you were the first engineer summoned, you had seen and knew that there was Ann Arbor freight there for interchange at Alexis, would you have hauled it?

A. Under all the circumstances, just as they were.

Q. What do you say?

A. Why, yes; I would have went, but it wouldn't have been anything to me.

Q. What wouldn't?

A. Hauling that freight before other ones went out.

148 Q. Oh, all the difference it made was that from the others having gone out you knew that it was boycotted, didn't you?

A. Yes, sir.

Q. If that information had come to you from any other source that it was boycotted you would have refused just the same, whether anybody else had refused to haul that same train or not, wouldn't you?

A. No, sir.

Q. What do you understand by a boycott, when the employees of one road will refuse to receive and handle the freight of another road, connecting line? That is what you understand is a boycott?

A. Yes, sir.

Q. And from the fact that these engineers had refused to haul this train that had Ann Arbor cars in it you understood that there was a boycott on as against that freight, didn't you?

A. Yes, sir.

Q. And it was from the fact that there was such a boycott on—you were informed of it in that way from the fact of their having refused it; that you quit before you would haul it; is that so?

A. It was.

Q. Do you recollect of saying to Mr. Bradeen there at the round-house that night that a member of the committee had told you not to haul Ann Arbor freight?

A. That I said that?

Q. Yes.

A. No, sir.

Q. Did you or did you not say so?

A. I did not say so.

Q. Not anything upon that subject?

A. No, sir.

Q. After this conversation there and you had returned the paper to Mr. Bradeen you went and took your engine?

A. Where I was told to take it.

Q. And you moved it how far?

A. Why, from the yard up onto the round-house track.

Q. What did you do that for?

A. Called the old ash track.

Q. What did you do that for?

A. Because Mr. Bradeen told me to. I done it for Mr. Bradeen.

Q. What did he say?

A. He told me where to take it.

Q. Just repeat what he said.

A. That is something I can't do. I don't recollect just exactly what he said. I told him I would take the engine where he wanted it, and he told me the track that he wanted the engine on, and I took her there for——

Q. Why did he want it there, to haul that train out?

A. No, sir; to be left.

Q. For what?

A. I suppose—I don't know whether he had room in the round-house or not.

Q. Didn't you understand that you left that engine out there for the purpose of hauling that train?

A. That is what I had in mind; he didn't say that train.

Q. How is that?

A. When I quit—I told him I would quit in the round-house, and he says, "I didn't know whether I would go on that train or another train."

Q. In running it out of the round-house you didn't run it out so as to make more room in the round-house; you ran it out—think a moment—you ran it — to hitch it onto some other train going to Detroit?

A. Yes, sir.

149 Q. So your intentions were all right, so far as hauling the same trip was concerned, to Detroit, providing you didn't have this boycotted train that the other men had left?

A. That was it.

Q. And when you got out there, where was the first balkiness on the part of the locomotive or anybody about proceeding with the business and what was it?

A. Why, the conductor handed me the clearance card and told me that there was a—it wasn't a through train.

Q. Told you there were Alexis cars in it?

A. Yes.

Q. And you believed those were the boycotted cars?

A. Yes, sir.

Q. And then what did you say?

A. I'd quit.

Q. Had you hooked onto the train—coupled up?

A. That is something I could not tell. I suppose so. I backed up. The train was already made up and I started so much behind time. That is something I don't know anything at all about.

Q. You understood right then and there that up to the time that he told you that he had these Ann Arbor cars in—Alexis cars—you have said at that time when he handed you the cl-arance card that that train was all ready to proceed on its way; that all you had got to do was to sound your whistle for the pusher to go ahead?

A. Go out on the main track.

Q. Yes; go out on the main track, but you know that was the situation; instead of doing that you said what?

A. "I'd quit."

Q. And that upon his informing you that this was the train that had the Alexis cars and as soon as that was said to you you said, "I quit"?

A. Yes, sir.

Q. So up to that time you were prepared and ready and willing to pull the train right along down to Detroit, provided it was a train having no such cars in it, weren't you?

A. Yes, sir.

Q. What I want to know is just what you said when the con-

ductor handed you the clearance card and told you that there were Alexis cars there, what did you then say.

A. I had quit, I think, was the words I spoke.

Q. I had quit?

A. I'd quit.

Q. I had quit?

A. Yes; or "I will quit." I wouldn't say just exactly what I used.

Q. You didn't say you had quit, because you were ready there and going ahead with these cars. So you said, "I *wuit*," didn't you?

A. Yes.

Mr. POTTER:

Q. When this paper was handed to you by Mr. Canniff—I want you to state to the court if you read this:

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY CO.,
TOLEDO, OHIO, *March 17th*, 1893.

To all employés:

Having been advised that certain employés of this company will decline to handle the interchange business of this company and the Toledo, Ann Arbor & North Michigan R'y Co., attention is called to the attached mandatory order of the United States circuit court, which makes it imperative on this company, its managing officers, and all its employés to comply with the orders of said court.

W. H. CANNIFF, *Gen. Supt.*

Did you read that?

A. I told him that I read that.

150 THURSDAY A. M., *Mar.* 23, 1893 (9 o'clock).

JAMES LENNON, first being duly sworn, testified as follows:

Direct examination by Mr. SOUTHARD:

Q. You may state where you live.

A. In Toledo, Ohio.

Q. How long have you lived here?

A. About 30 years or over.

Q. What is your business or calling?

A. Locomotive engineer for the Lake Shore & Michigan Southern Railway Company.

Q. How long have you been a locomotive engineer?

A. Fourteen years.

Q. And during this time for what company have you worked?

A. For the Lake Shore & Michigan Southern Railway Company.

Q. Continuously during that time?

A. Yes, sir.

Q. You are a member, I believe, of the Brotherhood of Locomotive Engineers?

A. Yes, sir.

Q. Mr. Clark is also a member of the order?
A. Yes, sir.
Q. Do you know whether the others who are charged here with a violation of the order of the court—do you know whether Mr. Conley and Mr. Case and Mr. Rutker are?
A. Yes, sir; I know that.
Q. Who of those, if you know, are members?
A. Not any of them, that I know of.
Q. Mr. Clark is a member?
A. Only Mr. Clark.
Q. How recently, if at all, did you sever your relation with the Lake Shore road?
A. About ten o'clock March the 18th, last Saturday.
Q. Where were you on the 17th day of March?
A. I was on the road from Detroit this way, coming south.

Mr. SOUTHARD (to Mr. Potter): It is not claimed that this statement in the affidavits in reference to the freight being in the Lake Shore yard upon the 17th——
Mr. POTTER: We have proof that it was on the 18th. It was on the 18th.
Mr. SOUTHARD: I didn't know whether there was anything occurring on the 17th.
Mr. POTTER: No.

Mr. SOUTHARD:

Q. At ten o'clock on the morning of the 18th?
A. Yes, sir.
Q. What had you been doing upon the 17th of March?
A. On the 17th of March I left Detroit at six o'clock on the local coming south.
Q. At what time did you arrive at Toledo?
A. I should judge along about 5 o'clock in the evening—half past four to 5 o'clock.
Q. You left Detroit at what time?
A. At 6.5 on the morning of the 17th.
Q. And arrived at night about five?
A. Yes, sir.
151 Q. I will ask you whether upon the 17th day of March or at any time previous you saw what has been referred to in this proceeding as the order or mandate of the court made in this case, if you saw that.
A. No, sir; I didn't see it.
Q. Upon the 17th or at any time previous?
A. I didn't see it.
Q. I will ask you if you knew anything about it or its contents?
A. No, sir; I did not.
Q. On the morning of the 18th what were you doing?
A. On the morning of the 18th I left Air Line Junction about four o'clock and went north as far as Monroe.
Q. Did you go to Detroit that morning?
A. No, sir.

Q. I will ask you whether before you started for Detroit (Monroe), or at any time up to the time that you quit the service of the company, you had in your possession, or whether you had seen or heard or read, the order made by this court.

A. I had not.

Q. Whether you knew anything about the contents of that order?

A. I haven't seen it nor heard anything of it.

Q. You mean you had not up to that time?

A. No, sir.

Q. You came south that morning as far as Alexis?

A. Yes, sir.

Q. Did you stop at Alexis that morning?

A. Yes, sir.

Q. About what time?

A. About ten o'clock.

Q. You may state to the court how you came to stop at Alexis.

A. The order-board was up at Alexis notifying all trains to stop, and our brakeman went over to see——

Q. You did stop?

A. Yes, sir.

Q. Where?

A. I stopped before I came to the target first—before I came to the crossing—and pulled up to the office and then stopped again.

Q. Where is the office?

A. On the south side of the Ann Arbor crossing.

Q. You pulled up to the office and what occurred there?

A. The head brakeman went over to see what the order-board was put up for.

Q. Who was your head brakeman?

A. Keogan.

Q. The gentleman who testified here?

A. Yes, sir.

Q. You went over to the office; what happened?

A. He came back and said there was a car to go, or cars, I don't know which, to which I made no remark.

Mr. POTTER:

Q. A car or cars from any particular road?

A. No; he didn't say from any particular road.

Mr. SOUTHARD:

Q. Did he deliver to you at that time any written order?

A. No, sir.

Q. What happened after that?

A. The agent came out—that is, the gentleman that is acting agent there now; he had only been there a day or two. I didn't know what his business was. They came out and he and
152 the head brakeman went out to examine a car on the Ann Arbor track, and while they were gone the conductor came out and went into the telegraph office and got an order to take the

car further south and handed the order to me. When he handed the order to me I said, "I quit."

Q. Have you got that order?

A. No, sir; I have not got that order; it was addressed to the conductor.

Q. Was there any other or further conversation or any other thing done, so far as you can remember, before you stated that you would quit?

A. No, sir; there was nothing further that I can remember that was done.

Q. What then happened—what was then done by anybody? State all the circumstances in your own way.

A. There was nothing said or done. I asked the conductor how that 104 was—that is, our passenger train. He said he would find out in the office whether they were on time or not. They were reported, I think, on time.

Q. That is a train going——

A. Going north, due there at 10.32. He says they were on time. We backed down in out of the way onto the side track. We backed down there and took the engine after they left and went up to the crossing. That is a half a mile from the side track. Then I got the order from Mr. Hand, asking—or some sort of a way—I can't word it just exactly how it was—but the sum and substance of it was if the order to take the car was recalled would I take my train? I answered, "Yes; I will take my train to Air Line Junction all right."

Q. What had you said before that, if anything, to those persons or to your conductor with reference to taking your train where he desired?

A. I told the conductor that I would take my train to any place they desired me to do so.

Q. After you answered that order or inquiry to Mr. Hand, to the effect that you would take your train to Air Line Junction all right, what happened?

A. Nothing transpired then until we got another order from Mr. Hand, signed S. S. H.

Q. Was that one of the orders a copy of which was read here the other day?

A. Yes, sir.

Q. To designate it you may state what it contained.

A. Well, it contained about the interstate-commerce law, and that this car was on its regular course, and they insisted that I should take it, to which I made no answer.

Q. Something has been said about your receiving an order or communication from Mr. Watson about this time.

A. Yes, sir; I received a communication from Mr. Watson.

Q. Was the purport of that what was indicated in the testimony of Mr. Hand the other day?

A. Yes, sir.

Q. So that we may recollect the substance of it—you may state the substance of it.

A. Well, it read something like this: "James Lennon: You may come along and handle Ann Arbor cars. (Signed) J. M. Watson."

153 Q. About what time in the day did you receive that order?

A. I should judge about 2.10; somewheres along there.

Q. When did you receive that order with reference to the time that you received the last order or communication from Mr. Hand?

A. I don't know as there was much difference between either one of them.

Q. Do you remember which you got first?

A. I got Mr. Watson's first.

Q. You got Watson's first?

A. Yes, sir.

Q. How soon after that did you get the other?

A. Well, I was not furnished with a copy of the other one.

Q. You saw it, did you?

A. Yes, sir.

Q. Well, what did you then do?

A. I went to work and got the car out and came to Air Line Junction.

Q. What determined you or changed your determination in the matter of bringing that car—you brought it to West Toledo, didn't you?

A. Yes, sir.

Q. What determined your bringing that car to West Toledo?

Mr. POTTER: I suppose that what he did would be competent, but not what he had in his mind.

Mr. SOUTHARD: We have been running a little loosely here——

Mr. POTTER: I have not objected to that.

The COURT: You may answer.

WITNESS: Well, the conclusion I came to was that the trouble on the Ann Arbor road was all settled, and that we could come along and handle Ann Arbor cars.

Mr. SOUTHARD:

Q. You may state, Mr. Lennon, whether you had had any talk or conversation or communication of any kind with any one with reference to the matter of handling or not handling Ann Arbor freight prior to that time.

A. I had no communication with anybody, either one way or the other.

Q. I will ask you whether you acted in compliance with any order or orders of the Association of Locomotive Engineers?

A. No, sir.

Q. Or from the Brotherhood of Locomotive Engineers?

A. No, sir; none whatever.

Q. Or whether such orders in any way or manner had anything to do with your refusing to take Ann Arbor freight or with quitting the service of the company at any time?

A. No, sir; none whatever.

Q. I will ask you whether at that time you knew of any combination or determination upon the part of any number of
154 men, or any men, other than yourself—whether you knew of any determination upon his part or upon their part to refuse to take Ann Arbor freight.

A. None. I had none whatever.

Q. What was the reason, you may state to the court, that you quit the service of the company?

A. Because the company wanted me to do something that I didn't want to do.

Q. And what was that?

A. To take one empty car from the Ann Arbor road.

Q. And why didn't you want to do it?

A. Well, because I thought if the Ann Arbor road couldn't do justice by their men I couldn't help them out.

Q. What was this car?

A. An empty Red line Lake Shore—Red line.

Q. If you know, what was it taken from Alexis to West Toledo for?

A. I don't know; I couldn't say.

Q. Where was it placed after you got it to West Toledo?

A. We kicked it in on the side track and left it there.

Q. Further than you have stated you made no refusal to haul Ann Arbor freight or Ann Arbor cars or cars from the Ann Arbor road?

A. No, sir; I made no refusal.

Q. It has been stated here that your reply was that you wouldn't take that car; you would quit first. What were the words you used, as nearly as you can recollect, when the matter was suggested?

A. I made a statement or I told the men there that I didn't refuse to handle any Ann Arbor cars, but that I would quit.

Q. Was that before or after the time that you received the statement from Mr. Hand—the first communication from Mr. Hand—or was it before and after that you signified your intention to take the train to Air Line Junction if they wanted it taken there?

A. It was when I received the first communication from Mr. Hand.

Q. That was after you had quit the service of the company?

A. Yes, sir.

Q. You did bring your train to Air Line Junction?

A. Yes, sir; I did.

Q. And took this car to West Toledo. Then what did you do?

A. I left my engine in the proper place designated for that purpose and went over and registered and went home.

Q. What is the purpose of registering?

A. We have to register our arrival.

Q. That was the ordinary and customary thing to do when you came in?

A. Yes, sir.

Q. Have you been in the service of the company since that time?

A. No, sir.

Cross-examination by Mr. GREENE:

Q. Following right along, now, your movements, you registered on arrival?

A. Yes, sir.

Q. Where?

A. At Air Line Junction.

Q. At what place?

A. At the round-house.

Q. What else did you do there?

A. I went home.

155 Q. In there, before leaving, what did you say there about taking out train No. 134?

A. The caller says, "You get 134;" I says, "All right, I will be up."

Q. # 134 was to leave Air Line Junction at what time?

A. 7.30.

Q. That was your regular run?

A. No, sir.

Q. Had you ever taken it before?

A. Yes, sir.

Q. Where was that train to go to?

A. It goes to Monroe and then goes to Detroit sometimes; you can't tell.

Q. Who was it that made this remark to you about it?

A. The man in charge of the office in there—Babcock.

Q. And he was the man charged with that duty and authority, to indicate to you if there was a train for you and what the train was—to call you?

A. No; he didn't call us.

Q. But he was to give you the information, notify you that the train would be ready for you?

A. Yes, sir.

Q. Please repeat what he said to you.

A. He says, "You get 134;" I said, "All right, I will be up."

Q. You understood that he had a right to understand that that train would be ready to go out at that time, and your saying what you did indicated that you would be on hand to take it out?

A. I said, "All right; I will be up."

Q. Didn't what you said, in the ordinary course of business, mean that you would be up to take that run, and what you did say mean that?

A. No, sir; I said, "All right; I will be up."

Q. Wasn't that what you would always say?

A. I used to say, "All right; I will be up there to take my engine out."

Q. You didn't mean him to understand that you would be up and refuse to take the train?

A. I don't know.

Q. What did you mean when you uttered those words, "All right; I will be up?"

A. That I would be up. I said, "All right; I will be up."
Q. What did you mean?
A. That is what I meant; I didn't say where I would be.
Q. Did you mean up town or up there upon your engine?
A. I couldn't answer that.
Q. Don't you know that you meant right then and there and meant that he should understand that you would be up to take that train?
A. I have answered the question; I answered that I said I would be up.
Q. (Last question repeated.)
A. I don't really know what he understood; I am telling you what I meant; I said I would be up; it was always spoke between him and I, "All right; I will be up;" I don't know what he understood by it.
Q. (Question again repeated.)

The COURT: Your answer is a little ambiguous. I think they have a right to know what you intended; I think you should
156 answer what you meant when you said "I will be up."

Mr. GREENE:

Q. Didn't you mean to have *in* understood that you would be there and take the train?
A. I don't know what they understood by it.
Q. Did you mean that he should understand from what you said that you would be there to take the train?

The COURT: The question is what you meant that he should understand by that answer.

A. I meant that I would be up.

Mr. GREENE:

Q. Now, I ask did you not mean that he should understand that you would be there on time and take that train?
A. I don't know whether he understood it so or not.
Q. Did you mean that he should understand it from what you said—no matter what you said—did you mean that he should understand that you would be there to take that train?
A. I don't know whether he understood it so or not.
Q. What did you mean?
A. I didn't mean anything. I just made simply the remark that I would be up.
Q. Were you notified by somebody to be at the superintendent's office the next forenoon?
A. Yes, sir.
Q. Who notified you?
A. I think the caller.
Q. Who was that?
A. I couldn't say; I was not at home.
Q. What was the message you got?

A. I didn't get any message.
Q. The order or call?
A. To be at Johnson's office at ten o'clock.
Q. He is the division superintendent?
A. Yes, sir.
Q. What reply did you give?
A. I didn't give any reply. I was not at home.
Q. Did you appear at that time?
A. Yes, sir; I did.

The COURT:

Q. Did you get that that same night—the night of the 18th?
A. No; it was Monday, I guess, I got that or Sunday; I don't know which; Sunday, I think it was. Sunday would be the 19th.

Mr. GREENE:

Q. It didn't occur to you to say to the man when he told you that 134 would be ready for you—to say to him, "I will not take it out. I have quit"?
A. Nobody told me that the train would be ready.
Q. When he notified you that night it didn't occur to you to say anything of that kind?
A. No, sir.
Q. Isn't it a fact that Mr. Hand's message was received and its contents communicated to you—that message from Mr. Hand in which he said to you that the company had been notified by the court that they must handle interchange business with the Ann Arbor, &c., was received before 11.48 in the forenoon, and
157 didn't you reply to the conductor when informed of the contents of that message or to Mr. Chilcott that you had Watson's message about taking the train to Air Line Junction, and that you did not refuse to pull the car, but that you would quit before taking it out? Didn't you make that answer to Mr. Chilcott before 11.48 on the forenoon of Saturday?
A. I told that gentleman I hadn't refused to take any cars from the Ann Arbor road; that I had quit. I don't know what time that was; it was before noon.
Q. And at that time you had this message from Mr. Hand—before you made that statement?
A. Which—the first message?
Q. The message which I have just read a portion of, that the company had been notified by the court, &c.
A. Yes; I had that message.
Q. Before you made that statement to Mr. Chilcott, and that statement was made before noon?
A. Yes, sir.
Q. Mr. Watson's message was not sent nor received before 2.30 in the afternoon?
A. Yes, sir; there was another one came that I didn't receive—from Mr. Hand.
Q. Who was Mr. Watson, as you then understood?

A. Well, I understood that he was chairman of the general grievance or of the board of adjustment of the men on the Lake Shore road.

Q. How did you understand that he had any business to interfere in this matter by telegraphing to you in that way?

A. He didn't have that I know of.

Q. You understood it that way, didn't you?

A. No, sir; I understood nothing.

Q. As quick as you had this message you came on with the car?

A. Yes.

Q. Up to that time you had refused?

A. Yes, sir.

Q. What time did you arrive at Monroe?

A. 9.15.

Q. Had you looked at the bulletin-board there?

A. There is no bulletin-board there where we could see it.

Q. What time did you leave Air Line in the morning?

A. I left the house about half past three in the morning.

Q. Had you looked at the bulletin-board there?

A. Yes, sir.

Q. What did you see on that?

A. I looked at the Detroit branch bulletin-board, and I didn't see anything to conflict with me and I went on.

Q. You saw a paper like that (order)?

A. No, sir; I didn't see it.

Q. Was it posted on that bulletin-board which you looked at?

A. It might have been posted, but I didn't see it.

Q. You know where the bulletin-board is upon which orders are posted there and which the rules require you to examine before you go out, don't you?

A. Yes.

Q. Just tell us right where that bulletin-board is located.

A. As you go into the big doors in the round-house to the right there is a slate and a bulletin-board.

Q. There is only one bulletin-board there?

A. That is all; for our reports.

158 Q. How large a board is that?

A. I couldn't say.

Q. About how large?

The COURT:

Q. As large as the top of that table?

A. Oh, yes; twice as large as that, I guess.

Mr. GREENE:

Q. Will you say that the duplicate of that order of Mr. Canniff's and of that order of the court was not then and there on the board?

A. I wouldn't say anything of the kind. I didn't see it.

Q. What did you mean when you said that you saw nothing to conflict with your duty—you said that?

A. I said there was nothing there that conflicted—on the Detroit branch bulletin orders—and so I went on.

Q. How did you know that there was nothing there to conflict?

A. I generally looked at the Detroit branch bulletins.

Q. Did you look it over enough to see what was there?

A. I looked the branch bulletin-board over—the rest of that I really don't take notice of unless I am going out on the Air Line.

Q. Was not this the general bulletin-board?

A. It was all one bulletin-board, but our branch bulletins are down to one side.

Q. Wasn't this on the branch bulletin-board?

A. I didn't see it if it was.

Q. Mr. Chilcott read it to you?

A. No, sir; after I quit I saw it.

Q. You then saw it and understood it?

A. No, sir; I didn't understand it. It would take a pretty good lawyer to understand it.

Q. You knew what there was in it?

A. I read it, but I couldn't pick any information out of it.

Q. What time of the day did you read it?

A. I guess it must have been about 11 o'clock—when I got quieted down a little bit.

Q. You read Mr. Canniff's notice?

A. Yes, sir.

Q. Did you understand that?

A. I understood that; yes.

Q. That states that the order of the court made it imperitive on all employés of the company to comply with the order and not to decline to handle or interchange business with the Ann Arbor. You understood that fully, didn't you?

A. I understood the heading of it, but the rest of it I didn't understand and don't understand it yet.

Q. You understand this: that the employés of the Lake Shore Company "are hereby enjoined and restrained from refusing to offer and extend to said The Toledo, Ann Arbor & North Michigan Railway Company * * * which may be offered to said defendants companies by the complainant," and that they may be enjoined and restrained from refusing to deliver cars which
159 may be billed over complainant's line from points in one State to points in other States—you understand that?

A. No, sir; I don't really understand it.

Q. You understood that it meant that you should handle Ann Arbor freight, didn't you?

A. No, sir; I don't understand what it does mean.

Q. That is just exactly what Mr. Canniff's notice stated and which you said you understood.

A. I understood the heading of it, but I didn't understand the law at the bottom of it, and I don't understand it yet.

Q. Why did you refuse to haul the train at the time you did?

A. For the simple reason that I didn't want to go and handle Ann Arbor cars.

Q. You hadn't any grievance or complaint against the Lake Shore?

A. No, sir; none whatever.

Q. No question of wages or grievance of any description?

A. No, sir; perfectly satisfied.

Q. The simple thing that operated upon your mind, prevented you from hauling Ann Arbor freight, was that you understood there was a strike there upon that road, and that its business was boycotted—that is, in other words, you and other engineers would refuse to handle their freight with a view of aiding, out of sympathy, with a strike, the operatives of that road?

A. I don't know what any other engineers were doing; I done just as I thought was my best duty. I wouldn't handle them cars.

Q. For the purpose of helping out the employés there who were on a strike?

A. Yes, sir.

Q. That was the object; in other words, out of "sympathy," I believe it is commonly called. Did you see Mr. Watson anywhere or at any time within a week previous to last Saturday?

A. No, sir; I don't think I have seen Mr. Watson for two months and maybe over.

Q. Had you had any conversation with anybody in relation to the strike on the Ann Arbor road or the boycott on that road or of that road's traffic?

A. No, sir; I had none whatever with anybody.

Q. Hadn't it been the subject of conversation with any of the crowds which you had been in?

A. No, sir; I go to Monroe or to any other place and take my engine out and go to my business and don't bother anybody.

Q. When did you first learn that there was a strike on the Ann Arbor?

A. I couldn't say really when it was. I read it in the papers the first I knew of it.

Q. That was some ten days before last Saturday?

A. Yes; somewhere along there.

Q. Then were you advised that there was a boycott as against the freight of that road?

A. No, sir; only what I seen in the papers.

Q. You understood that at some time—some ten days prior to the 18th?

A. Yes; somewheres along there.

Q. And then you understood that the boycott was off pending negotiations, didn't you?

A. Yes; from what I seen in the papers.

160 Q. Then afterwards you understood that the negotiations were off and that the boycott was on again, didn't you?

A. Yes, sir.

Q. When was it that you were informed that the negotiations were off and the boycott on again?

A. I don't really remember when it was.

Q. Was it the night before you quit?

A. I don't remember when I did see it.

The COURT:

Q. You saw it in the papers, as I understand?
A. Yes, sir.

Mr. GREENE:

Q. That was a very short time before the morning of the 18th?
A. I don't know.
Q. It was before you took your engine from Air Line Junction to make your last trip, wasn't it?
A. Before I took my engine from Air Line Junction?
Q. Yes; to make your last trip—Saturday morning.
A. I guess it was.
Q. And it was acting upon that information that led you to pursue the course you did, did it?
A. Yes; it was.

Re-examination:

Q. What do you understand by a boycott?
A. Well, I don't know.
Q. In other words, I want to ask you this: whether you understood there was any movement by any men, engineers or other men, or any number of men, who had agreed not to take Ann Arbor freight—whether you knew of any agreement among any men.
A. No, sir; none that I know of.
Q. Do you mean this: that you had heard that some men had refused to handle Ann Arbor freight?
A. No, sir.
Q. Now, what did you mean when you said to counsel that you understood there had been a boycott of Ann Arbor freight and within a short time prior to the time that you went to Monroe, upon the morning of the 18th, that you heard that Ann Arbor freight was boycotted; what did you understand by that?
A. I understood that they were not handling Ann Arbor freight.
Q. That who was not?
A. The Lake Shore—we were not.
Q. Did you know—had you heard of any instance where Ann Arbor freight was not handled or did you know of any arrangement of any kind not to handle it?
A. No, sir; none.
Q. Had you heard of any such arrangement?
A. No, sir.
Q. Had you at that time?
A. No, sir.
Q. Did you act upon anything you had heard or read in the paper or did you act according to your own notion in the matter and independently of anything?
A. I acted on my own free will.
Q. In other words, were you induced to do what you did do or

did you do it because of anything you had heard, or did you do it of your own motion?

A. I done it of my own motion.

Recross-examination by Mr. GREENE:

Q. Why didn't you do it the day before?

A. I had no occasion.

161 Q. What was the difference in the condition of things?

A. I don't know what the difference was.

Q. If there was no occasion the day before when did the occasion arise?

A. I was not asked to handle Ann Arbor cars the day before.

Q. Were you ever asked to handle Ann Arbor freight before?

A. Yes.

Q. Why didn't you quit then?

A. They didn't ask me to do anything that I didn't want to do.

Q. Why didn't you want to do it then?

A. Because I didn't want to handle Ann Arbor cars as long as the company couldn't do right with their men. I was not going to help them.

Q. Suppose any Ann Arbor cars had been offered to you a day or two days before, wouldn't you have hauled them?

A. Yes, sir.

Q. You would?

A. Yes, sir.

Q. Why on those days and not on Saturday?

A. I didn't want to handle it Saturday.

Q. The reason was because the boycott was off before Saturday and on on Saturday. That was the reason, wasn't it?

A. The reason I wouldn't handle them on Saturday—I didn't want to handle them.

Q. And you didn't want to handle them because the boycott was on that day?

A. I didn't want to handle them on Saturday.

Q. Why not?

A. Because I didn't want to help the Ann Arbor folks out that much.

Q. You had helped them out before Saturday?

A. Yes; I had and always have.

Q. Why didn't you refuse to handle Ann Arbor cars on Friday—the strike was on just the same then—and did refuse to do it on Saturday?

A. Well, I didn't see fit to handle them Saturday and I did those other days.

Q. You are a member of the Brotherhood of Locomotive Engineers?

A. Yes, sir.

Q. How long have you been?

A. About twelve years.

Q. You are familiar with their rules?

A. I ain't very familiar.

Q. You have read them?

A. Yes, sir.

Q. You knew about this rule 12 which was read here yesterday?

A. No, sir; I don't attend the meetings enough to be familiar with them.

Q. Were you at the meeting at Mr. Canniff's office on Sunday which has been spoken of?

A. No, sir.

Q. You understood that there was a rule of the Brotherhood that when an issue had been sustained by the grand chief to be carried into effect by the Brotherhood it should be recognized as a violation of the obligation for a member of the Brotherhood who should be employed on a road running in connection with or adjacent to said road to handle the property belonging to said road or system in any way that may benefit said company with which the
162 Brotherhood is at issue until the grievances have been settled? You knew that there was a rule of the Brotherhood substantially to that effect, didn't you?

A. Yes, sir.

Q. You understood that in taking the course you did Saturday that you acted substantially in compliance with that rule, didn't you?

A. No, sir; I was acting of my own free will. I was not acting on that rule whatever.

Q. I understand that. I don't ask if you were impelled to do it by this rule; but you understood that you were acting in accordance with that rule.

A. I was acting on my own free will.

Q. But you also understood that you were acting in accordance with this rule, didn't you?

A. I never thought of that rule when I quit.

The COURT:

Q. When you registered as coming in that day, when did you next report for duty at the company's office at the round-house? Did you report after that time?

A. No, sir.

Q. You were notified by the caller that you would take 134 and you said, "All right; I will be up?"

A. Yes, sir.

Q. You didn't go out that morning?

A. No, sir.

Q. Did you send any word?

A. No, sir.

Q. In the due course of your duty when should you have reported next?

A. It would depend on the way the engines run.

Q. In view of this notice by the caller that you would have No. 134, if nothing had taken place to have changed your relations with the company, when would you have reported for 134?

A. I would have had to report at six o'clock that evening—Saturday evening.

Mr. GREENE:

Q. Did you cause a telephone message to be sent to the round-house that evening to get another man in your place; that you couldn't go out?

A. I seen the caller; I didn't call by telephone.

Q. Where did you see him?

A. I met him at the Broadway bridge when I was in the hands of those gentlemen here.

Q. You were in the hands of what gentlemen?

A. The United States marshal.

Q. You proceeded after leaving your engine to what place?

A. Home.

Q. How long had you been at home? Did the marshal call there?

A. I don't know.

Q. Where did you go next?

A. I was on my way home when I met him.

Q. Did you go home?

A. No, sir; he wouldn't let me go home to wash my face.

Q. You started for home and on your way home met the marshal?

A. Yes, sir.

Q. And then you went with the marshal to what place?

A. To the court-room. We stopped at the Broadway bridge and then went to the depot. We stopped at the Broadway bridge until the marshal got somebody else. He was after somebody else and left us in charge of another gentleman.

163 Q. And then you saw the caller?

A. Yes, sir.

Q. Who is he?

A. I don't know his name.

Q. What did you say to him?

A. I says, "You will have to get a man for that engine."

Q. That was for 134?

A. No; I says "for 416."

Mr. SOUTHARD:

Q. That was your train?

A. That was my engine that I had been running.

Mr. GREENE:

Q. And you gave that information for the purpose of having him inform the people at the round-house so that they could get some one else in your place, did you?

A. I don't know; I told them, "You will have to get a man for 416." That is all that was said.

JOHN CONLEY, first being duly sworn, testified as follows:

Direct examination by Mr. SOUTHARD:

Q. Where do you live?
A. In Toledo; I board there.
Q. How long have you lived in Toledo?
A. I was born here.
Q. What has been your business?
A. It has been railroading for 11 years.
Q. And during that eleven years for what companies have you railroaded?
A. For the Lake Shore.
Q. During all of the 11 years?
A. Yes, sir.
Q. Upon the 17th or 18th day of March what were you doing?
A. On the 17th and 18th I was running a switch-engine.
Q. Up to what time on the 18th?
A. 12.40.
Q. In the morning?
A. In the morning.
Q. You had been continuously running the switch-engine from what time up to that time; I mean upon that day, the 17th and the 18th; what time did you go to work upon the 17th?
A. About a quarter to six on the 17th; that night yard master notified me that he wanted me to put the engine on the coal dock and come to the round-house office. Before I got there the caller came and called me and said that they wanted me for an extra right away. I went over; I didn't go into the office; I got the engine out——
Q. Before you went into the office?
A. Yes; for 4.20. I looked at the slate to see what it was marked for, and I got the engine out and backed down onto the train.
Q. Now, Mr. Conely, up to that time had you seen, had you read, or had you heard in such a way as to know anything about it, the mandatory order of the court, which has been so often referred to, made in this case?
A. No, sir.
Q. I understand that you hadn't seen it nor read it nor heard it during that time?
A. No, sir.
Q. When was it that you first saw or read the mandate of
164 the court, if at all, the order of the court?
A. The first time I seen it was when I quit. I got up on the engine, and Mr. Sheldon and Mr. Bradeen and Mr. Stanton and Mr. Horgan got up there, and they read something to me; I didn't know what it was; I couldn't read it from where I was sitting.
Q. How long was that after you had quit the service of the company?
A. A couple of minutes, I guess.
Q. It all happened, then, pretty nearly together?
A. Yes, sir.

Q. You said that you hitched onto this engine and backed down to the train?

A. Yes.

Q. Then what happened?

A. The conductor came up with an order or something—I didn't know what it was—and gave it to me, and I put it in my pocket. I had an oil can in my hand and couldn't very well read it. I got up on the engine, and these gentlemen followed me. I asked him what cars he had in the train, and he told me he had some for Alexis, and he said something about Monroe. That is all I said. I said I would quit. I got up in the engine and *hot* my clothes, and these gentlemen followed me.

Q. And you said you would quit, and immediately got up and got your clothes, and these gentlemen followed you. Who followed you?

A. Mr. Bradeen and Stanton and Sheldon and Horgan.

Q. What did they say to you, or any one of them—what did he say to you?

A. I think it was Mr. Sheldon said I was foolish for quitting, and wanted to know what I quit for. I told him I quit because I didn't want to do what the rest of the men refused to do. I supposed they refused to handle Ann Arbor freight.

Q. Are you a member of the Brotherliood of Locomotive Engineers?

A. No, sir.

Q. Have you ever been a member of that organization?

A. No, sir.

Q. Have you any personal knowledge of the rules and regulations of that organization?

A. No, sir.

Q. In quitting the service of the company did you act in concert with anybody else or had you had any understanding with anybody else?

A. No, sir.

Q. Before you did it did you know what anybody else was going to do or thought of doing or contemplated to do?

A. No; I didn't know anything about what they were going to do. I supposed that was what they had quit for.

Q. You supposed that others had quit for that?

A. Yes, sir.

Q. When did you first learn that anybody had quit the service of the company?

A. About six o'clock in the evening I was getting my engine out—getting ready for work—and Mr. Kessler said that Mr. Clark and his fireman had quit on that account.

Q. Did you act in compliance with any order or orders from any body of engineers or board of engineers or association of engineers or the Brotherhood of Locomotive Engineers?

A. No, sir.

Q. Did you see Mr. Bradeen down there?

A. I did after I quit.

165 Q. Had you had any talk, any conversation, any communication of any kind with anybody with reference to the subject of quitting or the subject of the hauling or the not hauling of Ann Arbor freight?

A. No, sir.

Q. Had you had any such communication, directly or indirectly, with anybody?

A. No, sir.

Q. What were Mr. Bradeen's duties, if you know, at that time?

A. He was our foreman.

Q. What is his business—what does he do down there?

A. Well, I don't know just what his business is. He is supposed to get the engines out of the house, I guess.

Q. Does he usually come around to see whether you get onto your engine or not?

A. No, sir.

Q. Or to hear what you have to say about it?

A. No, sir.

Q. When had he been around before to observe what took place in starting an engine?

A. I hadn't seen him that day.

Q. Had you at any time before that?

A. No, sir. Not the day before; not the 17th or the 18th.

Q. How many of them got onto your engine?

A. Four, I think; there might have been some outside. I couldn't see any.

Q. Did they all talk to you?

A. Yes, sir. I believe they did.

Q. What further, if anything, was said about your going out or not going out?

A. Well, the only one that talked was Mr. Sheldon. He said I was foolish in quitting. I told him I guessed I knew my business; that I thought I would quit, and that is all there was about it.

Q. You said something about his reading something to you at that time.

A. Yes.

Q. Do you know what it was—that was after you had quit?

A. I don't know what it was, and I don't understand it now.

Q. Do you remember what the substance of it was?

A. No, sir.

Q. Do you remember whether it was this order which has been exhibited to the other witnesses?

A. It was something about United States law, but I didn't understand that.

Q. Do you remember whether it had upon the top of it an order from Mr. Canniff, what was read to you?

A. No, sir. I don't remember that.

Q. Had you seen this order or any part of it, or had you seen anything purporting to be an order or mandate of the court upon the bulletin-board of the company at that time?

A. No, sir.

Q. Had you made any examination of the bulletin-board?

A. I looked at the slate. I went right to the bulletin-board. I couldn't see that there was anything up there.

Q. Why couldn't you see?

A. It was not light enough to see.

Q. How long was it after you were called before you got your engine?

A. About five minutes.

166 Q. Were you asked to refresh your recollection whether you would take out Ann Arbor cars?

A. No, sir.

Q. I mean before you quit. Were you afterwards?

A. Yes, sir.

Q. By whom?

A. By Mr. Sheldon.

Q. What did he say to you?

A. He asked me if he would take out the Ann Arbor cars if I would go, and I said I would.

Q. You may state to the court—give the court your reason for quitting the service of the company at the time you did quit.

A. Well, because I didn't think that was doing right by the Ann Arbor men and I thought I had a right to quit and I wouldn't go against them.

Q. You wouldn't handle Ann Arbor freight while you thought they were not doing right by their men. Is that your reason?

A. Yes, sir.

Q. When did you come to that conclusion; when did you form that determination; when did you come to that—when did you make up your mind?

A. When they told me there was Ann Arbor cars in that train. I didn't know whether they were Ann Arbor cars or not; they said they were for Alexis.

Q. You suspected that they were Ann Arbor cars?

A. I guess so.

The COURT:

Q. What time was this?

A. About one o'clock in the morning of the 18th.

Q. About six o'clock of the evening before you had learned from some source that Clark and his fireman and others had refused to take out this same train?

A. Yes, sir.

Cross-examination by Mr. POTTER:

Q. And for the reason that there were cars in that train for delivery to the Ann Arbor road, wasn't it?

A. Yes, sir.

Q. So that you understood, then, when you were called upon to take your engine, that you would probably be required to perform the same services, didn't you?

A. Yes, sir.

Q. You took your engine from the round-house?
A. Yes, sir.
Q. And moved down across the puzzle switches?
A. Yes, sir.
Q. Onto the track where this train was?
A. Yes, sir.
Q. And coupled up to it?
A. Yes; I guess it was coupled up. I struck the cars.
Q. You backed up onto the train for the purpose of making the coupling, didn't you?
A. Yes, sir.
Q. And with the intention to perform your service, didn't you?
A. Yes, sir.
Q. And the conductor came along and handed you a card?
A. He handed me something. I don't know what it was. I put it in my pocket.
Q. It was a clearance card, was it not?
A. I guess it was not. I guess it was an order.
Q. You didn't take it out to look at it?
A. No, sir. I had the oil can and the torch in my hands and I couldn't.
167 Q. Isn't it usual and customary where an engineer receives an order from the conductor just before starting out on the road—usual for the engineer to stop and see what the order is and understand it?
A. I intended to do that before I started.
Q. You can read, of course, and write, I take it?
A. Yes, sir.
Q. You put it in your pocket?
A. Yes, sir.
Q. You finished the oiling up of your engine and performing this service?
A. No, sir; I quit right there.
Q. You performed the service of oiling up your engine?
A. Yes.
Q. That is something usual and customary before starting on the road?
A. Yes.
Q. A part of the service of the engineer in the performance of his services?
A. You are supposed to do that before your time commences.
Q. The conductor came along about that time, and did you ask him whether there were any Ann Arbor cars in the train?
A. I asked him what he had.
Q. Were you on the engine at that time?
A. No, sir; I was on the ground.
Q. With your torch in your hand?
A. Yes, sir.
Q. And your oil can?
A. Yes, sir.
Q. And he said that he had some freight for Alexis or some cars

for Alexis delivery, seven cars, and the balance for some other places?

A. He said something about Monroe.

Q. When he told you that he had cars for Alexis delivery, you understood by that, didn't you, that those cars were for delivery to the Toledo, Ann Arbor and North Michigan Railway Company?

A. Well, I supposed that was what the rest of the men quit for, and that is what I was going to quit for.

Q. That is what you supposed?

A. Yes, sir.

Q. And then it was that you said to the conductor, "I will quit"?

A. Yes, sir.

Q. Up to that time you had said nothing with reference to quitting the service of the company?

A. No, sir.

Q. That was the first suggestion made to anybody in connection with the company that you would quit its service?

A. Yes, sir.

Q. And the reason why you refused to perform any further service was that the cars that were marked for Alexis were for delivery to the Toledo, Ann Arbor & North Michigan Railway Company?

A. Yes, sir.

Q. You were called about what time in the evening or day to make this run?

A. About 12.40 in the morning.

Q. You had been in the service of the Lake Shore Company for how many years?

A. About 11 years.

Q. As an engineer?

A. A year and four months as an engineer.

Q. Had you during that service been called upon to make the freight run from Toledo to Detroit?

A. Not by trips.

168 Q. You had been called upon to perform that service?

A. Yes, sir.

Q. Expected, while in the service of the company, that you might be called upon to perform that?

A. Yes, sir.

Q. So that there was nothing extraordinary in calling upon you to perform that service, was there?

A. No, sir.

Q. You made no objection to performing the service?

A. No, sir.

Q. So far as your relations with the Lake Shore people were concerned, you were contented with the compensation you were receiving and contented with the treatment, were you not?

A. Yes, sir.

Q. You had no grievance against the Lake Shore people?

A. No, sir.

Q. You had no grievance against any of those who patronized the

road—who shipped freight over it or travelled upon it; you had no grievance generally against the public, had you?

A. No, sir.

Q. You said that when you were called and went into the engine-house you looked at the slate. Do you mean by that—when you speak of the slate do you mean the bulletin-board?

A. No. The slate is where they have marked up for what engine and what run.

Q. Did you stop to examine the bulletin-board?

A. I looked at it, but I couldn't see anything on it. I looked at it ever- day.

Q. How close were you to that when you looked at it?

A. About two or three feet.

Q. Did you have a lantern in your hand, or a torch?

A. No, sir.

Q. It is lighted up with oil lights and lamps and reflectors in the round-house, is it not?

A. I believe it is kerosene oil.

Q. You had been to the bulletin-board before during the night-time, hadn't you?

A. No, sir.

Q. Not?

A. I was on the morning of the 17th.

Q. During the time that you were in the performance of your service for the company hadn't you ever been to the bulletin-board in the night-time to seen what was upon it?

A. Not when I was working, because I hardly ever went there because I can't see.

Q. If you were called upon to do any work in the night didn't you always go to the bulletin-board to see what the orders were? That was your rule?

A. Yes, sir.

Q. Your custom?

A. Yes, sir.

Q. When you went there you went to see what was on the bulletin-board, didn't you?

A. Yes, sir, if I could see.

Q. It was your duty to examine the board, was it not, to see what the orders were?

A. Yes, sir.

Q. Before you went to the performance of any other service as engineer?

A. Yes, sir.

Q. If you got there and couldn't see, couldn't inspect and examine the board, was there any difficulty in your getting a lamp
169 or light or a torch to see and make sure of what was on the bulletin-board?

A. You could go to your engine and get your torch. That was the only way.

Q. How far was your engine from that?

A. Oh, I can't tell.

Q. How far was that engine from the bulletin-board?

A. Oh, a couple of hundred feet.

Q. Were there no lights or torches of other men handy by or lights or lanterns?

A. Not that I seen. There was nobody around there at night.

Q. Did you make any inspection to know what was upon the board; make any effort to learn what was on the board?

A. Well, I seen that morning what was on there—that is,—thing that was on there for two or three days. I looked at it, but I didn't think there was anything different. I could see the paper on there; that is all. I couldn't read it.

Q. There is no difficulty in your reading? You have no difficulty in reading, have you?

A. Yes, sir.

Q. I mean where it is light, where you can see, you have no difficulty in reading?

A. No, sir; not where it is light.

Q. After the conductor told you, in answer to your question, that there were some cars for Alexis delivery you said then, as I understand you, "I quit"?

A. Yes, sir.

Q. Did you say anything else?

A. That is all.

Q. What did you do then?

A. I got up into the engine.

Q. What did you do then?

A. I put the oil can away and commenced to get ready to get my clothes.

Q. Who was the fireman with you?

A. Westgate.

Q. And then, as I understand, Mr. Sheldon and some others got up into your cab with you?

A. Yes, sir.

Q. Did he then read to you the notice that Mr. Canniff had sent out and posted?

A. After talking awhile he did.

Q. *What* this the notice that he read to you: "Lake Shore & Michigan Southern Railway Company, Toledo, Ohio, March 17th, 1893. To all employés: Having been advised that certain employés of this company will decline to handle the interchange business of this company and the Toledo, Ann Arbor and North Michigan Railway Company, attention is called to the attached mandatory order of the United States circuit court, which makes it imperitive on this company, its managing officers, and all its employés, to comply with the orders of said court." Did he read that to you?

A. I couldn't say whether he did or not.

Q. Have you no recollection as to what he did read to you?

A. No, sir; when he started to read it I told him I had quit; that settled it.

Q. You paid no attention to what he read to you?

A. No, sir.

Q. While you were upon the engine he asked you, then, after he had read something to you—and you say you don't remember what it was—he asked you if the Alexis cars were taken out of the train or switched out of the train you would make the run, and you said you would?

A. Yes.

Q. In other words, you told him that if the Alexis cars were switched out of the train that you would complete the service that you had entered upon?

A. No, sir; he asked me if they would switch out the cars if I would pull it, and I said I would.

Q. You meant that you would go and make the run as you had intended to do when you started?

A. I had quit once; if he would give me another job I would; he would have to give me another job.

Q. You meant to convey the information that you had quit, and if he would give you another job by throwing out these cars that you would go on?

A. Yes, sir.

Q. You meant that you had quit on Alexis cars and Ann Arbor freight cars?

A. Yes, sir.

Q. Wasn't that what you meant?

A. Yes, sir.

Q. You didn't quit on anything else—it was only those cars that you had quit on—that is what you meant?

A. That's all.

Q. You meant that you had quit working for the company on Alexis cars?

A. Yes, sir.

Q. You were willing to work for the company on other cars?

A. Yes.

Q. But you were not willing to work for the company on Alexis deliveries?

A. I supposed that was what the other men quit for, and that is what I quit for.

Q. You were at the Sunday meeting of the engineers with Mr. Canniff and Mr. Stevens, were you not?

A. No, sir.

Q. Were you not present at that meeting on Sunday previous—on the 12th of March?

A. No, sir.

Q. You are certain of that, are you?

A. Yes, sir.

Q. I mean at Mr. Whittlesey's office at the station; weren't you there on Sunday morning?

A. No, sir; I was in bed.

Q. You live in Toledo?

A. Yes, sir; I board here.

Q. Did you read the morning and the evening papers?

A. Not very often.

Q. When did you first learn of what is called the Ann Arbor strike, along about the time that the strike occurred?

A. I didn't read the papers——

Q. When did you first hear of the Ann Arbor strike?

A. I heard some of the boys talking around town and around the yard; I couldn't tell you when I heard it.

Q. You heard of it from some source along about the 7th of March, at the time of the Ann Arbor strike, didn't you?

A. I couldn't tell you when it was.

Q. How long before the 17th was it that you first heard of the strike on the Ann Arbor road?

A. I couldn't tell you.

Q. Can you give us any idea?

A. No, sir.

Q. Whether it was one day or ten days?

A. No, sir; I couldn't tell you.

171 Q. Isn't it your impression that you heard of it about the time of its occurrence?

A. No, sir.

Q. Did you hear at any time of a boycott, as they call it, that it was in force or suspended?

A. No, sir; I didn't hear anything about it.

Q. You never heard anything about it?

A. No, sir.

Q. Do you mean by that that you didn't hear anything about the strike or boycott or the suspension of the boycott prior to the 18th of March?

A. No, sir.

Q. Did you know that Mr. Arthur and Mr. Sargent were here?

A. No, sir.

Q. Never heard of that?

A. No, sir.

Q. Never heard that there were any negotiations pending between the Ann Arbor and their employés for the adjustment of their difficulties?

A. No, sir.

Q. How did you first hear of the Ann Arbor strike?

A. The first I heard of it was when Mr. Kessler told me that night.

Q. Where was it that Mr. Kessler told you?

A. At the engine-house, about six o'clock in the afternoon.

Q. What did he tell you?

A. He told me that Mr. Clark had refused to go out—that Mr. Clark and his fireman had quit the service of the company.

Q. Was that all?

A. On account of handling the freight.

Q. Was that all that he told you?

A. Yes, sir.

Q. That is all that you heard?

A. Yes, sir.

Q. You didn't know anything more about the strike?

A. No, sir.

Q. Or the boycott?

A. No, sir; I don't know what a boycott is.

Q. How was it, then, that you were unwilling to handle Ann Arbor freight—that is, to make this Alexis delivery—if you hadn't heard of any boycott or trouble further than what you have just said?

A. Why I refused?

Q. Yes.

A. Because the rest of the men quit, and I thought they wasn't doing right with the men on the Ann Arbor road, and I thought I would quit.

Q. Up to that time you hadn't been informed that there was any trouble on the Ann Arbor?

A. Not before I took the yard engine, but before I took the road engine I was.

Q. When were you first informed, and by whom, of the Ann Arbor strike?

A. At six o'clock in the evening.

Q. Who told you?

A. Mr. Kessler. He said that Clark and his firemen had quit because they didn't want to handle Ann Harbor freight.

Q. Did he tell you why they didn't want to handle Ann Arbor freight?

A. No, sir.

Q. That is all he said to you?

A. Yes, sir.

Q. Why didn't you want to handle Ann Arbor freight?

A. Because I didn't think I was doing right with the men over there.

Q. Why?

A. If they wouldn't pay them enough wages and do right with them, why, I am going to stay with them.

Q. Who told you that?

A. I knew that.

172 Q. How did you know that?

A. I seen it in the papers and about them not paying them and I seen their scale of wages.

Q. When did you see that?

A. About a month ago.

Q. So that you did get some information on the subject from the papers?

A. That is all.

Q. Did Mr. Kessler or the fireman or the engineer that preceded you—did they advise you or suggest to you not to go out on the run?

A. No, sir.

Q. Nobody told you or notified you not to make the run?

A. No, sir.

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A. No, sir.

Q. The reason that you finally, as you say, quit the service was

because you didn't think you would be doing right by the Ann Arbor men?

A. Yes, sir.

Q. You didn't stop to think whether you would be doing right by the company that employed you?

A. I quit.

Q. I say, before that, when you were informed about the cars, you didn't stop to think whether you were doing right by the company that employed you, did you?

A. I didn't think I was doing anything wrong.

Q. Let me ask you this question: Didn't you state to Mr. Stanton, the train master, on the occasion—that is, on the evening of the 17th, the night of the 17th, or the morning of the 18th—that you had been approached by one of the Brotherhood engineers and advised not to go out and make the run; didn't you state that to Mr. Stanton at or about that time?

A. No, sir.

Q. Didn't you state this while you were at the engine and while Mr. Sheldon was there and Bradeen and Mr. Horgan; didn't you state that in their presence—that you had been advised and notified by the Brotherhood not to make the run?

A. No, sir.

Q. Had you been advised before that not to make the run?

A. No, sir.

E. F. KESSLER, first being duly sworn, testified as follows:

Direct examination by Mr. SOUTHARD:

Q. Where do you live?

A. Elkhart, Indiana.

Q. How long have you lived there?

A. Fifteen years.

Q. What has been your employment?

A. Working in the locomotive shop at Elkhart, and for the last eight months I was firing for the Lake Shor- and Michigan Southern.

Q. On what division?

A. The Michigan division.

Q. With whom did you fire?

A. With different ones.

Q. With whom were you firing upon the 17th and 18th?

A. Engineer Case.

Q. Upon the 17th day of March what time did you go to work?

A. I couldn't tell the exact time; I should judge about 6.30.

Q. Were you called by anybody?

A. Yes, sir; I was. I was called by the caller at the round-house. I was called for no particular time, though.

Q. By whom were you called?

A. I can't tell you the caller's name.

173 Q. You went down to the yards, and whom did you find?

A. Went where?

Q. Down to the Junction. Where did you go—to the Junction?

A. I lived at the Junction.

Q. What did you do after you were called?

A. I went in to the slate to see who the engineer was, and from there I went to the boarding-house and got my old clothes and my lunch basket and came over and got onto the engine and put on my over*hauls*.

Q. Where was the engine when you got onto it?

A. In the round-house.

Q. Was there anybody else there?

A. Nobody but the engineer and the night foreman.

Q. Who was he?

A. Mosier.

Q. Now you may go on and state what you did after that.

A. I put on my overclothes and rang the bell for the man to give the table to go out.

Q. Did he give you the table?

A. He did, and I started down to the water plug and filed her tank and went down part way to the puzzles and stopped and the engineer went over and registered. I staid on the engine.

Q. Then what happened?

A. Mr. Sheldon and Mr. Horgan came along and got onto the engine and got up into the cab.

Q. Then what took place?

A. The engineer came along and we backed down onto the puzzles, and the man that tends the puzzles gave us the switches and we backed down onto the train.

Q. Then what?

A. The conductor came along and gave the engineer the clearance card, and the engineer says—no; Mr. Sheldon says, "All right, let her go." The engineer says to him, "Wait a minute. Where is the conductor of this train?" or "Who is the conductor of this train?" Mr. Case said that, and at that the conductor stepped into the gang and handed him the clearance card. Mr. Case says, "How many cars have you got on?" I am not sure whether he said 48 or 42; it was somewhere between 40 and 50, I know, and Mr. Case asked him if he had a straight train. The conductor says, No, sir. He told him that he had seven cars for Alexis. Mr. Case says, "I have quit."

Q. You mean by a "straight train" a through train?

A. Yes; a train from Air Line Junction to Detroit.

Mr. POTTER:

Q. Did he say "I quit" or "I have quit"?

A. "I have quit."

Mr. SOUTHARD:

Q. Where was the train at that time?

A. In the lower Detroit yards—on track No. 1.

Q. That is a side track?

A. Yes, sir.

Q. What did you do or say during this time?

A. I said nor done nothing.

Q. You said nothing and you did nothing?

A. No, sir.

Q. Did anybody speak to you or hold any conversation with you?

A. None whatever.

174 Q. Now, what happened after Mr. Case said "I have quit;" what did he do?

A. Mr. Sheldon spoke up and said, "Here; don't be in a hurry." He says, "Do you understand the law?" Mr. Case says, "I don't know whether I do or not." Mr. Case told Mr. Sheldon that he had quit all right and was going to get off the engine; that he didn't want to hold his train any longer, as he had quit. Mr. Sheldon said if there would be any delay on the train he would take all the responsibility on himself.

Q. What position did Mr. Sheldon hold; was he the assistant division superintendent?

A. As to what Mr. Sheldon is I am unable to tell you.

Q. Well, he said he would take all the responsibility?

A. On himself with regards to any delay of the train, and he wanted to read the law. As he said so Mr. Case told him if he would take all responsibility on himself all well and good, and I believe that he proceeded to read the law. What it was I am unable to tell.

Q. Up to that time had you seen or read or had you heard of so as to know the substance or contents of the order of the court made in this case?

A. No, sir; I had not.

Q. I understand that you say that you had not seen it or read it or heard of it in such a way as to know anything about the contents of it?

A. No, sir.

Q. Well, what did you do when Mr. Case said that he had quit; did Mr. Case leave then?

A. He did not.

Q. You may go on and state what Mr. Case did.

A. Mr. Case told them after they had got through reading that he had quit the service of the company, but if they would give him the switch he would put the engine back on the coal dock. They gave him the switches, and he done so. He got off there and went over to the round-house and took off his overclothes. The engineer stated that the fireman quit with him.

Q. Up to this time had you said anything about quitting or not quitting?

A. Yes, sir; I told Mr. Sheldon that I had quit.

Q. When was it that you told this or made this statement to Mr. Sheldon?

A. At 7.30.

Q. When with reference to the time that Mr. Case had quit?

A. After Mr. Case quit.

Q. After Mr. Case quit what made you quit?

A. Because the engineer quit.

Q. How long after Mr. Case said he had quit was it that they pulled out this paper or order or "law," as you call it, and read it?

A. Probably a minute or two after.

Q. Have you been in the service or employ of the company since that time?

A. No, sir; I have not.

Q. Have you reported for duty since that time?

A. No, sir.

Q. What, if anything, was said about there being Ann
175 Arbor cars or Ann Arbor freight in the cars (train) other than Alexis cars?

A. What is that?

Q. Was there anything said about Ann Arbor freight or cars there?

A. Nothing more than I heard the conductor say that he had seven cars for Alexis.

Q. Did you hear the conductor say why he quit; did he give any reason why he quit—I mean the engineer?

A. I did not, sir.

Cross-examination by Mr. POTTER:

Q. When the conductor told the engineer, Mr. Case, that there were seven cars for Alexis, then he said "I have quit"?

A. Yes, sir.

Q. Did he use the words "I have quit" or "I quit"?

A. "I have quit."

Q. "Or I quit"?

A. I believe he said "I have quit," right there and then.

Q. Did he use the words "right there and then"?

A. When the conductor told him what he had.

Q. Then he said "I have quit right there and then" or here and now"? What were the exact words that he used, if you can recall them?

A. I can't just repeat the exact words that he said.

Q. Give us the substance of what he said when the conductor told him that there were seven cars for Alexis.

A. I heard him say—he said "I have quit."

Q. Is that all that you heard him say?

A. Yes.

Q. What did you mean when you said "then and there"? Did the engineer use that term?

A. Not as I know of.

Q. What time did you and Mr. Case report for service that evening?

A. At no particular time.

Q. What time did you put in an appearance at the round-house?

A. About 5 o'clock. I had been laying off.

Q. Were you called to make that run?
A. I was.
Q. Was Mr. Case called?
A. I don't know whether he was called before or after.
Q. Was he your engineer?
A. Yes, sir.
Q. Is it usual and customary when a call is made that the engineer and fireman, the crew of the engine, are called together?
A. Most generally; yes.
Q. You suppose he was called about the same time that you were?
A. I don't know what time he was called.
Q. At what time were you called?
A. For no particular time.
Q. You were notified to come to the round-house?
A. I was at the round-house, between the round-house and the machine shop.
Q. Who notified you?
A. The caller.
Q. At what time?
A. About 5.40.
Q. What time did you see Mr. Case?
A. Not until about 7.20.
Q. When he came you put on your overalls?
A. I don't know when he put on his; I put on mine; he had on his; when he put them on I don't know.
Q. He took the engine out of the round-house?
A. Yes.
176 Q. And went down across the puzzles onto this track on which these cars were placed?
A. Yes, sir.
Q. Did you back up onto the train?
A. Well, that is something I can't answer. I don't know whether we backed onto the train or not. That is something that I can't tell you.
Q. How long had you been there before the conductor came up?
A. Probably two or three minutes.
Q. What did you do—what were you engaged in doing—the usual service performed by engineers and firemen—performed upon a locomotive engine in the service of a railway company?
A. Yes, sir.
Q. Up to the time that the conductor came along you had not quit the service of the company?
A. No, sir.
Q. You didn't understand that the engineer had quit the service of the company prior to the time that the conductor came up there, did you?
A. No, sir.
Q. So far as your own conduct was concerned and so far as the conduct of the engineer was concerned, it was the usual conduct of an engineer and fireman in the performance of such services in the employ of a railway company, wasn't it?

A. Yes, sir.

Q. You hadn't notified the company of any intention on your part to resign or leave the service up to that time?

A. No, sir.

Q. Had you given any notice to anybody of your intention?

A. No, sir.

Q. Did the engineer?

A. Not as I know of.

Q. Did the engineer notify you or say anything to you that he had quit the service of the company?

A. No, sir.

Q. Or that he would quit the service of the company?

A. No, sir.

Q. So that fact is that the quitting of the service of the company was after the conductor had told him that there were Alexis cars in that train?

A. Yes, sir,

Q. You quit because the engineer quit?

A. I did, sir.

Q. The fact that there were Ann Arbor cars had nothing to do with your quitting?

A. No, sir.

Q. Is it usual and customary where an engineer quits or resigns the service of the company that the fireman does it for the same reason?

A. Well, I don't know as it is in all cases.

Q. You had no grievance or complaint against the Lake Shore, had you?

A. None whatever.

Q. You were perfectly satisfied with your compensation and work?

A. I was.

Q. You had no complaint to make against your officers so far as your services were concerned?

A. No, sir.

Q. Did the fact that the cars were marked Alexis cars have anything to do with your quitting the service?

A. No, sir.

177 Q. If there hadn't been Alexis cars in that train would you have quit the service?

A. No, sir.

Q. Even though your engineer had quit?

A. I quit because the engineer quit.

Q. Suppose there hadn't been Alexis cars in the train—that is, cars for delivery to the Toledo, Ann Arbor and North Michigan Railway Company—and your engineer had left the engine or quit the service, would you have quit also?

A. I would have done so.

Q. Do you mean by that to say that in all cases where the engineer with whom you are engaged quits the service of the c-pany that you will quit?

A. Not in all cases.

Q. What is the distinction? Why in this case? What was there in this case?

A. In this case there was another man that refused. I wouldn't take another man's job.

Q. You understood that he had resigned, didn't you—that he had quit the service? You understood that the other engineer and the other fireman had quit?

A. Yes, sir.

Q. Was that the reason why you refused or why you quit?

A. Not altogether—a little something to do with it.

Q. You knew that before you went out with the engine, didn't you?

A. Yes.

Q. And why didn't you quit then, if that was the reason?

A. You can't always tell what is coming.

Q. Before you got onto the engine to perform the service as a fireman you had been informed that the prior engineer and the prior fireman had quit the service of the company, ha*nd*'t you?

A. Yes, sir.

Q. Now, why didn't you quit the service of the company then if the reason why you quit afterwards was because the fireman had quit that service and you didn't want to take his job? Can you give an answer to that?

A. The only reason is that they asked me to do something that I didn't feel like doing.

Q. And that was that you didn't want to haul Ann Arbor cars, did you?

A. I don't know as it was just Ann Arbor cars about it. As I told you before——

Q. Isn't it a fact that you did not want to haul Ann Arbor cars because the Ann Arbor was boycotted?

A. I didn't have anything to do with the boycott.

Q. But ain't that the reason that you didn't want to complete your service as a fireman—because there were Ann Arbor cars there and you knew there was trouble between the Ann Arbor road and its employés, engineers and firemen? Now, ain't that the honest truth about it?

A. Well, I don't know as that is just the honest truth about it.

Q. Was it the truth—leaving out the "honest"—was that the truth about it?

A. As I told you before, I quit because I didn't want to take another man's job.

Q. That you have told before; but you said that you didn't want to haul those cars?

A. I didn't say that I didn't want to haul the cars.

178 Q. Is not that what you mean, that you quit because you didn't want to haul Alexis cars and that your engineer had quit for the same reason?

A. Yes.

Q. Now, Mr. Kessler, if those six or seven cars that were there for

Alexis delivery had been switched out of the train before you got down there and you had understood that that was a through train, you would have gone on with it, wouldn't you?

A. I would, provided the engineer went.

Q. Do you say that in this service of this company as a fireman, there being no objections to the hauling of the cars and there being nothing objectionable about the service, that you would quit the performance of your service as a fireman because the engineer had left his engine or quit the service?

A. It depends on what engineer you go out with.

Q. Is that the answer that you make to that question?

A. Well, I would. I don't know what anybody else would do with regard to quitting.

Q. Did you know what engineer would be called next?

A. I didn't know who they were going to call next. I know at present who they did call next.

Q. Who did they call next?

A. Mr. Rutker.

Q. Did you know him?

A. Yes, sir.

Q. Did you know him to be a competent engineer?

A. Yes, sir.

Q. You would not have refused to perform service with him, would you?

A. Not as I know of.

Q. Now, supposing, for some reason, that your engineer had quit on account of sickness or some other reason and Mr. Rutker was to come there to perform that service, you would have gone out with him, wouldn't you, if there hadn't been Ann Arbor cars in that train—if it had been a through train from Toledo to Detroit?

A. Yes, sir.

Q. The truth is that you quit and that you said you quit hauling Ann Arbor cars or cars for delivery to the Toledo, Ann Arbor & North Michigan Railway Company, and you were ready and willing to perform service for the company in hauling these trains where there were no cars for delivery to the Toledo, Ann Arbor & North Michigan Railway Company. Now, isn't that the fact?

Mr. SOUTHARD: I hardly think that is a fair question to the witness.

Mr. POTTER: I will put the question in another way. (Stenographer asked to read the last question above, which he does, and the witness answered, Yes, sir.)

Q. You were ready and willing to perform your service as a fireman in the hauling of trains for the company except trains that had Ann Arbor cars?

A. Yes, sir.

Q. And when you started upon the performance of that service you intended to haul the company's trains, but didn't intend
179 to haul cars and trains having Ann Arbor cars in them?

A. I didn't intend to haul them; I intended to fire the engine which would haul the train.

Q. You intended before you did haul them to quit the service of the company?

A. No, sir; and I have nothing to do with the hauling of it.

Q. You keep up the steam?

A. I had nothing to do but keep up the steam.

Q. Didn't you put the coal in the fire-box and look to see how the steam pressure was and the water gauge?

A. Yes, sir.

Q. Those are necessary acts in the hauling of a train?

A. Yes, sir.

Q. You can't get along very well without a fireman in the hauling of a train?

A. Not as I know of.

Q. Now let me put this question to you: When you started out with Mr. Case on that engine you started with the intention of performing your service to the company as a fireman and hauling all trains—Lake Shore trains—that you were directed to perform services with, except such as contained Ann Arbor cars?

A. Yes, sir.

Q. Are you a member of what is called the Brotherhood of Locomotive Firemen?

A. No, sir; I am not.

Re-examination:

Q. Did you intend to state that when you quit you merely quit hauling Ann Arbor cars? Did you intend to say that or did you quit the service of the company?

A. I quit the service of the company. I didn't refuse to haul Ann Arbor cars. I quit the service of the company.

Q. Before you went out there, did you have any intention, one way or the other, in refusing or not refusing to haul Ann Arbor cars?

A. No, sir; I didn't have any intention of any kind.

Q. Did you have any thought of Ann Arbor cars or of any cars when you went out?

A. No, sir; I didn't know what was in the train.

Q. Had you thought upon the subject at all?

A. Not as I know of. I couldn't tell you that.

LEON C. THOMPSON, first being duly sworn, testified as follows:

Direct examination by Mr. SOUTHARD:

Q. Where do you live?

A. Toledo.

Q. How long have you lived here?

A. About 22 years.

Q. That is about all your life?

A. Oh, no.

Q. You have lived in Toledo 22 years?

A. Yes.

Q. Where in Toledo?

A. Well, in different parts.
Q. Where do you live now?
A. Out on Broadway.
Q. What is your business; what has it been?
A. Fireman for the Lake Shore & Michigan Southern.
Q. How long have you been firing there?
A. Well, it is going on six years.
180 Q. Since you commenced firing for the Lake Shore?
A. About six years since I commenced firing.
Q. Have you fired continuously right along?
A. No, sir.
Q. Upon the 17th day of March you were working for the Lake Shore, were you?
A. Yes, sir.
Q. Was there any engineer with whom it had been your work to fire for any length of time before that?
A. I don't understand the question.
Q. Was there any particular engineer for — it had been your work to fire?
A. Yes, sir.
Q. Who was he?
A. Mr. Clark.
Q. You were with Mr. Clark upon the 17th day?
A. I was firing for Mr. Clark.
Q. Are you a member of the Brotherhood of Locomotive Engineers?
A. No, sir.
Q. Have you ever been a member?
A. No, sir.

The COURT: He is a fireman.

Mr. SOUTHARD: They charge, as I understand, that these men are all members of the locomotive engineers.

Mr. POTTER: Oh, no; we don't say that.

Mr. SOUTHARD:

Q. Are you a member of the Brotherhood of Firemen?
A. No, sir.
Q. Did you quit the service upon that day?
A. I believe I quit the service of the company on the 17th of March.
Q. Now, when you quit the service did you do it—did anybody ask you to do it?
A. No, sir.
Q. What had happened just before you quit—what was the last work, the cause and circumstances of your quitting?
A. Do you want me to state what time I was called?
Q. You may state that.
A. I went up to Air Line Junction along about noon, I should say. I had some work to do on my engine; the engine, I believe, was in the yard then.

Mr. POTTER: Was this on the 17th?

Mr. SOUTHARD: Yes; the 17th, as I understand.

WITNESS: And after they brought her in and put her in the house I went on cleaning my engine up, and along about 3 o'clock, I believe, or somewhere around there, some man came out that
181 I had never seen before and tole me that we had an order for an extra at 5.30, and wanted to know if I would run. I said, Yes; he said, "All right," and said he would tell the coaler. I staid around the engine until about half past 3 and went to the engine-room and drawed my supplies, and stepped to the bulletin-board and came back and looked it over. There was nothing there that concerned me. Mr. Clark came around about 4 o'clock, I think. I was still working on the engine. He done what work he had to do.

Q. When you went to look at the bulletin-board was before Mr. Clark came?

A. Yes, sir.

Q. What time did you look at the bulletin-board?

A. About 3 or after; I would say 3.15. After Mr. Clark had done what work he had to do I rang the bell and they set the table for us, and we backed out to the water-spout and took water, and backed down—came across the puzzle—and backed down to the train; we didn't couple on. The conductor came around—I believe he came around; I wouldn't say whether he did or not; I was minding my own business. I set on my seat. I heard Mr. Clark say, "I have quit," and at that he opened the box where we kept our clothes and took his basket and coat. I says, "If you quit, why, you tell them that I have quit, too." He said, "All right." Before this Mr. Horgan and Mr. Moore came around and asked him if he had seen something that they had there in their hands.

Q. Was that before or after he had quit?

A. After he had quit. They asked if he had seen it, and he said that he had quit the service of the company. They had it in their hands, rolled up. They didn't answer. He said he had quit. We took the engine to the place where we left the engine. I met Mr. Clark after he got off and asked him if he had said that I had quit, and he said, yes.

Q. What did you quit for?

A. I quit because the engineer quit. I didn't care about going out with anybody else.

Q. Did you hear anything about there being Ann Arbor freight or Alexis freight on the train?

A. No, sir; I didn't know what was in the train at all.

Q. Did you hear anything about it then?

A. No, sir.

Q. Did you know anything about it from any source?

A. No, sir.

Q. Did you hear Mr. Clark or Mr. Horgan or Mr. Moore say anything about there being Alexis freight or Ann Arbor freight?

A. No, sir.

Q. Didn't hear anything about that?

A. No, sir.
Q. Did you have any orders from anybody to quit?
A. No, sir; I quit of my own free will.
Q. Did you have any talk with anybody about quitting at any time?
A. No, sir.
Q. Did you know of any orders for anybody to quit—did you ever hear of any?
A. No, sir.
182 Q. Or did you ever hear of anybody having got any orders, except from the members of the company, to haul or not to haul Ann Arbor cars?
A. No, sir.
Q. Or instructions?
A. No, sir.
Q. Or did you ever hear of any agreement or understanding between anybody, or did you ever hear anybody mention about any understanding or agreement, or anything of that character, in relation to not hauling or hauling Ann Arbor cars?
A. No, sir.
Q. When you quit did you have any knowledge or notice of any order of the court made in this case—what has been referred to as the mandatory order of the court?
A. No, sir.
Q. Had you ever seen it?
A. No, sir.
Q. Had you ever heard of it?
A. No, sir.

Cross-examination by Mr. POTTER:

Q. How long had you been in the service of the company?
A. I should judge somewhere around six years or over on its roads.
Q. Continuously?
A. No, sir.
Q. How long had you been in the service of the company upon the last occasion of your employment?
A. Somewhere in '90, I believe, I commenced, back.
Q. It had been somewhere in the neighborhood of a couple of years, then?
A. I started in c-aling first.
Q. How long had you been performing service as fireman?
A. I commenced c-aling before I went to c-aling this last time. My firing commenced in '90.
Q. You have been firing for the company going on three years, haven't you?
A. Yes, sir.
Q. Continuously?
A. Right along, only when I was sick or something.
Q. You have been in the service of the company for three years previous to performing service as fireman?

A. Yes, sir.
Q. Have you been performing the service with Clark all this time?
A. No, sir.
Q. How many engineers have you performed the service as fireman for?
A. It would take me a good while to count them all up.
Q. How long had you been performing service with Mr. Clark?
A. I can't say. I would judge a month or so or three weeks; I don't exactly know how long.
Q. The reason that you quit the service of the company at the time he did was because he quit?
A. Yes, sir.
Q. That was the only reason?
A. Yes, sir.
Q. No other reason at all?
A. Yes, sir.
Q. Nothing entered your mind only that he quit and therefore you quit?
A. Yes, sir.
183 Q. Have you any grievance against the Lake Shore people?
A. No, sir.
Q. You were satisfied with your employment up to that time?
A. Yes, sir.
Q. You had no complaint found with the performance of your duties or services?
A. No, sir.
Q. You were satisfied with the compensation that you were receiving?
A. Yes, sir.
Q. Now, do you say that you quit merely because your engineer quit?
A. I said that I quit because the engineer quit, and I didn't care to go out with anybody else.
Q. You remained on the engine after Mr Clark left, didn't you?
A. I staid there until the hostler took her to the house.
Q. You remained on the engine after Mr. Clark left?
A. Yes, sir.
Q. If Mr. Rutger had come down immediately after Mr. Clark left, would you have been unwilling to have performed service with him?
A. Yes, sir.
Q. You would not have performed service with him, would you?
A. No, sir.
Q. Why was it in particular that you wouldn't work with anybody else but Mr. Clark?
A. I had been working with him, and didn't care to be working with anybody else.
Q. If Mr. Clark had been taken sick or if for any cause had gone off the engine you would have resigned, wouldn't you?
A. I would have probably been sick, too.

Q. Then you would have represented to the company that you were sick?

A. I might have done so.

Q. Whether you were or not?

A. Yes.

Q. You might have been perfectly competent to perform the service, but if he had quit you would have quit, and told the company that you were sick even if it was untrue?

A. If he had been sick, I would have said I was sick.

Q. You would have told the company that you were sick, too?

A. If I was sick I would have said I was sick.

Q. If your engineer had quit on account of sickness, I understand that you would have quit, too?

A. I would have quit on account of sickness.

Q. Would you have quit on account of the sickness of the engineer?

A. Yes; I would have quit because he was sick, and I didn't want to go out with anybody else.

Q. I understood you to say that you would have said also that you were sick?

A. I would say that I quit because my engineer was sick, and I didn't want to go out with anybody else.

Q. Didn't you say a few moments ago that if your engineer was sick and said he would quit that you would have said the same thing?

A. I don't remember.

184 Q. Didn't you say that identical thing?

A. It goes to show—I can't remember what I say here.

Q. You didn't know whether there were any Ann Arbor cars?

A. No, sir.

Q. Now, as to the matter of discussing the handling of Ann Arbor freight, you never had had that with anybody?

A. No, sir.

Q. Didn't know anything about it?

A. No, sir.

Q. You didn't know there was a strike on the Ann Arbor road?

A. I knew that their men were not working.

Q. Had you heard that they had struck?

A. I seen by the paper that the Ann Arbor men were out. I knew that they were not in the service of the company.

Q. Didn't you understand that that was a strike?

A. What I understand and what I know is two different things. I seen by the papers that the men weren't working and wanted more pay.

Q. Didn't you understand that they had left the service of the company and quit?

A. Yes, sir.

Q. Don't you understand what is meant by a strike?

A. Not exactly.

Q. When did you hear that?

A. I picked up some paper and read it.

Q. Was it about the time that they left the service of the Ann Arbor people?

A. I don't know when they left.

Q. Did you understand or know that there was a boycott on Ann Arbor freight?

A. I don't know anything about boycott.

Q. Did you understand that the engineers and fireman were going to refuse to receive cars from the Ann Arbor road or deliver cars to the Ann Arbor road?

A. No, sir.

Q. You knew nothing about it?

A. No, sir.

Q. Didn't hear anything about that?

A. No, sir.

Q. Had never heard it suggested by anybody?

A. No, sir.

Q. So that you, then, would have performed the service as a fireman for the company—there being nothing else in the way—even though there had been Alexis cars in the train, would you?

A. It wouldn't have made any difference to me if the whole train was Ann Arbor cars. If I seen fit to quit it was my perfect right to do it.

Q. If you had known that there were cars in that train for delivery to *to* the Toledo, Ann Arbor and North Michigan Railway Co. you would have performed service as fireman in the hauling of that train that night?

A. I would if my engineer went out. I quit because he went out.

Q. Didn't he say to you that the reason why he quit was because there were Ann Arbor cars in that train?

A. No, sir.

Q. Did you see the conductor there before he said "I have quit" or "I quit"?

A. Well, I don't remember whether the conductor was around there or not. All I heard was Mr. Clark say that he had quit.

185 Q. Who did he say it to?

A. I guess Horgan and Moore and the conductor were there.

Q. Was the engineer in the cab at that time?

A. Yes, sir.

Q. Anybody else?

A. Yes, sir.

Q. Were you in the cab?

A. Yes; I was in the cab.

Q. Did you hear anything that these other people said to the engineer before that?

A. No, sir; I set on my seat, looking out of the window. I didn't know who the engineer was talking to, but I heard him say that he had quit.

Q. Up to the time that he said that he quit he hadn't quit, had he?

A. If a man says, "I have quit," he certainly has quit.

Q. Up to that time had he quit the service of the company?

A. I only know his words. He said that he had quit. That is all I know about it.

Q. From the time that you and Moore left the round-house you and he were in the performance of the general services performed by the engineer and fireman of a locomotive engine?

A. Yes, sir.

Q. When you left the round-house, so far as you were concerned, you left with the intention of performing your service as a fireman in the employ of the Lake Shore road, didn't you?

A. Yes, sir; until I seen fit to quit.

Q. When you entered upon the performance of your services you intended to perform the service of a fireman in the employment of the company, didn't you?

A. I intended to work for them until I wanted to quit; yes, sir.

Q. Until you wanted to quit?

A. Yes, sir.

Q. And the duties that you performed were such as were usually performed by a fireman?

A. Yes, sir.

Q. You backed down to the train; you didn't couple up to it, as I understand?

A. The engineer backed it down.

Q. You were on the engine?

A. Yes, sir.

Q. And the engineer handled the throttle, I suppose?

A. Yes, sir.

Q. And the engine was backed down towards the train. Why wasn't the engine coupled up? Do you know?

A. Because he quit before he got to the train. After he had quit he didn't have no right to move the engine again.

Q. What is the reason why he didn't couple up?

A. I don't know why he didn't couple up, but he said, "I have quit" before he got to the train.

Q. How far was the train away?

A. As far as from me to you or further.

Q. Had anything boarded the engine before he stepped on?

A. No, sir.

Q. In the usual performance of the service he would have backed down and coupled up?

A. Backed down and go through the puzzles and backed down onto the other track.

Q. And if there was a train there for him to haul he usually backed down directly to the train?

A. If he was working for the company he would.

186 Q. And he stopped within a few feet of the train. Nobody was on the engine except you and him?

A. That was all.

Q. What was the occasion of his stopping the engine before he could couple it up on that train?

A. Probably there might have been nobody there. The brakeman might not have been there to couple it. You have got to have somebody there to couple on.

Q. You don't know what the reason was?

A. No, sir; I was sitting on my seat.

Q. When you left the round-house, did you have any conversation with the engineer?

A. Nothing; only about taking water or something like that, or he might have asked me how the switches were or something like that. That was all the conversation there was between us.

N. O. JAMES, first being duly sworn, testified as follows:

Direct examination by Mr. SOUTHARD:

Q. Where do you live?

A. Elkhart, Ind.

Q. What is your employment—what has it been?

A. Fireman on the Lake Shore & Michigan Southern.

Q. How long have you been in the employment of the Lake Shore & Michigan Southern Railroad Co.?

A. About 14 months.

Q. And up to the 17th day of March?

A. Of March.

Q. Were you upon the 17th day of March a member of the Brotherhood of Locomotive Engineers?

A. No, sir; I was not.

Q. Or were you at that time a member of the Brotherhood of Locomotive Firemen?

A. No, sir.

Q. Now, what did you do on the 17th day of March—what did you do that day?

A. I was sleeping that day.

Q. Were you called for service that night?

A. I was called for service on the night of the 17th about 8 o'clock.

Q. What did you do after you were called?

A. Why, I went up to Air Line Junction.

Q. What did you do there?

A. I looked over the slate to see what engine I was to go out on and got onto the engine to see what was needed in the shape of supplies.

Q. Who was your engineer?

A. Mr. Rutger.

Q. Then what happened.

A. I saw that everything was ready; that it was my place to get ready until the engineer came. When he came we backed out of the house down to the water plug and took water and backed down to the train.

Q. Did you go into Bradeen's office?

A. I did. I stepped to the door. I didn't go inside. I don't

know that I was inside. I just stepped to the door and asked for a water glass.

187 Q. Then you got onto your engine. State all that you did and all that you saw and heard.

A. We backed away from the water plug and there were three or four men got on. I don't know that I can name all of them. Mr. She-don, Mr. Bradeen, and Mr. Stanton, I believe, were three of them. We backed down to the train. I don't know whether we coupled on or not; I couldn't say.

Q. Then what happened?

A. I think the engineer asked him what we had, was the first that I remember was said; the engineer asked him, I believe, what was the meaning of this or what so many men were in the cab for, or something like that. Mr. Sheldon made the answer that he guessed he could be in the cab if he wished, or something like that.

Q. Was it usual or customary to have so many men in the cab?

A. Well, it is not at that time. He told him he didn't think that he had any business in there, I believe, was the words that he used; I am not sure; that he would like to have a little room to communicate with the fireman; and after we got backed down to the train—I suppose it was the conductor; I didn't see him—he asked what he had; if he had a through train, I think.

Q. He asked the conductor if had a t-rough train?

A. I think he did.

Q. What did the conductor say?

A. I understood him to say that he had seven cars for Alexis.

Q. Then wh-t did Mr. Rutger say, so far as you know?

A. He says, "I have quit."

Q. Did he quit?

A. He quit then.

Q. Did these gentlemen have any further conversation there with him?

A. They did.

Q. What was that conversation?

A. I believe they asked him if he had read the order—some order of the court; I don't know what it was; I didn't hear; I couldn't tell what it was they did say—and I think he said he hadn't.

Q. You think he said he hadn't?

A. Yes, sir. He asked them where he should leave the engine; if they would tell him where he should take the engine he would take her there.

Q. When did you quit?

A. When the engineer quit.

Q. When, if at all, had you seen or read what has been termed here the mandatory order of the court made in this case?

A. I hadn't read it at all or seen it or heard of it.

Q. Hadn't seen it nor read it nor heard of it?

A. No, sir.

Q. Had you been to the bulletin-board that night?

A. Well, I went by it; I didn't look at it; I didn't read anything on it.

Q. Had you heard at that time of any combination, of any agreement, of any arrangement, by anybody or between anybody with reference to what is called the boycott of Ann Arbor freight?

A. I had not.

188 Q. Why did you quit? You may tell the court.

A. I quit because the engineer quit.

Q. What did you know at that time about the fact of there being Alexis cars in that train? I believe you have stated that you heard the conductor say.

A. I didn't know anything about it, only as I heard what I supposed was the conductor say that there were seven cars for Alexis.

Q. When did you form your determination to quit?

A. When the engineer quit.

Q. Had you thought of quitting before that time?

A. No; I don't know as I had.

Q. If your engineer had gone out would you have gone out?

A. No, sir.

Q. You would not have gone out; why?

A. Because I was determined to quit.

Q. Why had you determined to quit?

A. Well, I quit when he quit.

Q. But I understand you to say—I want you to explain that to the court—that you would have quit if he hadn't quit, so I am asking you what led you to the determination of quitting?

A. Well, I will take that back; I don't know exactly what I should have done under other circumstances; I might have quit and I might not; of course I don't know.

Q. The reason that you quit was because the engineer quit?

A. Yes, sir.

Q. Were you acting under or in compliance with any order of any board or body of engineers or the Brotherhood of Locomotive Engineers?

A. No, sir; I was not.

Q. Did you know of any such order?

A. I know there was an order of the Brotherhood of Locomotive Engineers; yes, sir.

Q. But did you know of any instructions?

A. No, sir.

Q. Had you held any conversation with anybody relative to the subject of quitting or hauling or not hauling Ann Arbor cars?

A. No, sir.

Q. Had you heard any consultation upon that subject?

A. No, sir.

Cross-examination by Mr. POTTER:

Q. Your engineer was Mr. Rutker?

A. Yes, sir.

Q. You and he took the engine at the round-house?

A. Yes, sir.

Q. You were the fireman and he was the engineer?

A. Yes, sir.

Q. You took it in the usual way and the course of business in the performance of that service, didn't you?

A. Yes, sir.

Q. Entered upon the performance of your service, the engine was backed down and coupled up to this train?

A. I don't know that it was coupled; it was backed down.

Q. You came up against it, didn't you?

A. I don't know.

Q. You don't know whether it was coupled up or not?

A. No, sir.

189 Q. Do you know who the conductor was?

A. No, sir.

Q. Did he get into the engine?

A. I didn't see him.

Q. Did he hand the conductor anything?

A. I didn't see that.

Q. You heard somebody say something to the engineer, and suppose it was the conductor?

A. Yes, sir; I h-ard the engineer ask him what he had, and I understood him to say that he had seven cars. He asked if he had a through train or something like that, and he said he had seven cars for Alexis.

Q. When you started to perform that service you undertook to complete the trip, didn't you?

A I didn't know anything about the conditions.

Q. And you quit because the engineer quit?

A. Yes, sir.

Q. Would you have quit if there had not been Alexis cars in that train?

A. I don't know what I should have done.

Q. What do you think about it?

A. It is not likely I would.

Q. And the occasion really of your quitting the service was because you had received information that there were cars *fro* delivery to the Ann Arbor road in that train?

A. I overheard that remark that there were cars for Alexis in that train.

Q. And that was really the reason that you quit, wasn't it, because you didn't want to perform any service in the handling of Ann Arbor cars? Wasn't that the principal reason why you quit the service of the company?

A. That is about the reason; y-s.

Q. You were not dissatisfied—had no grievance against the Lake Shore, had you?

A. No, sir.

Q. You had been in the service for how long?

A. About 14 months.

Q. No complaint was made to you in the performance of your service with the Lake Shore?

A. Not as I know of.

Q. So far as your service with the Lake Shore was concerned everything was satisfactory and worked smoothly?

A. Yes, sir.

Q. And if there hadn't been these seven cars for delivery to the Ann Arbor road you and the engineer would have pulled that train to Detroit, wouldn't you?

A. I don't know what the engineer would have done.

Q. Don't you think you would?

A. I couldn't say; we might and we might not.

Q. So far as you were concerned yo- would have done so?

A. I presume I would.

Q. Suppose the Ann Arbor cars had been switched out, and it had been a through train from Toledo to Detroit, would you have quit the service then?

A. I don't know what I should have done.

Q. Don't you think you would?

A. I don't know, I am sure. I couldn't say.

190 Q. Would there have been any other reason why you should not perform that service then?

A. There might have been and might not.

Q. There was no reason that you know of that would have occasioned your quitting the service of the company, then?

A. Of course, after I had quit I couldn't very well proceed.

Q. Supposing that the seven cars had been switched off of that train, and you had said before that you had quit for the reason that the cars were in that train and the cars had been taken out of the train, wouldn't you have gone on again?

A. I don't know as I would, as long as I had quit working for the company.

Q. Would you have reconsidered your resignation?

A. I wouldn't have went that night and reconsidered it, I think.

Q. You would have got on board and you would have hauled that train, wouldn't you?

A. I don't know what I should have done.

Q. You are not willing now to resume your service as fireman and go on in the service of the company?

A. I can't say that I would or wouldn't.

Q. Would you if there were Ann Arbor freight to deliver?

(Objected to, and not pressed.)

Q. Did you hear any of the conversation that took place between Mr. Sheldon and the engineer with reference to the switching out of the cars?

A. I believe I did hear him say—asked if he would go.

Q. Didn't you hear Mr. Sheldon ask the engineer if those seven Alexis cars were switched out of the train whether he would pull the train?

A. Yes.

Q. You heard what the engineer said in reply, didn't you?

A. I understood him to say that he would not; that he had quit

LEON C. THOMPSON, being recalled, further testified as follows:

Mr. SOUTHARD:

Q. You were with Mr. Clark?
A. Yes, sir.
Q. You were called for what time?
A. On the 17th of March?
Q. Yes.
A. At 5.30 p. m.
Q. What time was it when you quit the service; do you know?
A. Well, I should judge it was about that time. We are supposed to leave our water-spout in about 20 minutes.
Q. It was about that time that you went out?
A. Yes, sir.
Q. You had been in the employ of the Lake Shore before this time?
A. Yes.

The COURT: What do you mean by that?
Mr. SOUTHARD: He had not worked for the company continuously during the time that he mentioned that he had been in the employ of the company.

Q. Had you been out of the service of the company more than once during this time that you named?
A. Only once.
191 Q. When did that occur?
A. I think that was either in the latter part of 1889 or the first part of 1890, I couldn't state which.

Mr. SOUTHARD (to Mr. Potter): I understand that it is admitted that the other engineers and firemen who were called out were called out without any time?
Mr. POTTER: I don't know how that is. Do you mean the engineers called subsequently to this?
Mr. SOUTHARD: I understand that Clark and his fireman, Thompson, were called for a particular time.
Mr. POTTER: I think they have all testified that they were called, but for no particular time; were merely called to take the run that somebody else wouldn't take. I guess there is no dispute about that.

L. CLARK, being recalled, further testified as follows:

Mr. SOUTHARD:

Q. Have you ever known of or heard of any rule requiring any notice on the part of the company to their men before discharging them?
A. No, sir.
Q. If you know what the custom or practice is upon the part of the company in the way of discharging men, with or without notice——
A. I have known men to be discharged after they were called for

their runs, before they went out on their runs, but I never knew the company had any rules for discharging——

Q. Or for giving notice prior to discharge?

A. Or for giving notice.

Cross-examination by Mr. GREENE:

Q. You know the custom of the company, that when the company desire to discharge an engineer that, before discharging, he has a right to have an examination by notifying and having an examination, appearing by engineers in his defense, and that such hearings are granted very frequently, are they not?

A. They are.

Q. And that is granted as a right to the engineers?

A. Yes, sir; that is the agreement that we have with them in relation to the Lake Shore.

Q. With the officers of the company?

A. Yes, sir.

Q. I supposed that agreement would be here.

A. It is here. I think you have a copy. (Witness refers to General Order No. 6.)

Q. That order No. 6—among the miscellaneous provisions is this: "Men suspended or discharged shall be given a fair and impartial hearing within a reasonable time, and if found blameless shall be paid such wages as they would have earned during the time of suspension or discharge, right being granted to select other
192 engineers to assist in their defense." That is the rule that you understand, and that is observed and carried out as between the company and its employés, is it not?

A. Well, I don't know of any reason—it has not been carried out since that order was made.

Q. You don't know of any case?

A. I think it has been done previous to that order.

Q. That has been in force since November 1st, 1890, and that has been practiced, has it?

A. Yes, sir.

193 On April 21, A. D. 1893, an order was made in said cause and entered on the records of said court on April 21, A. D. 1893; which said order reads and is in the words and figures following, to wit:

Ex Parte: In the Matter of JAMES LENNON.

On consideration of the petition filed by Mr. G. M. Barber, Mr. J. T. Southard, and Mr. Frank H. Hurd, of counsel in behalf of the petitioner, it is considered, ordered, and adjudged that a writ of *habeas corpus* be refused; that the application of the petitioner for discharge from custody be denied, and that his petition be dismissed.

It is further ordered that petitioner pay the costs of this proceeding, taxed at $—.

The petitioner therefore gave notice of his intention to appeal the cause to the Supreme Court of the United States.

194 Afterwards, on the same day, the petitioner, James Lennon, filed his petition for appeal to the Supreme Court of the United States; which said appeal reads and is in words and figures following, to wit:

The Circuit Court of the United States for the Northern District of Ohio, Western Division.

Ex Parte: In Re JAMES LENNON.

The petitioner in the above-entitled cause respectfully prays an appeal to the Supreme Court of the United States from the decree entered against him therein on the 21st day of April, 1893.

JAMES J. LENNON, *Petitioner*,
By G. M. BARBER,
J. T. SOUTHARD, AND
FRANK H. HURD,
His Solicitors and Counsel.

195 Afterwards, on the same day, an order was made in said cause and entered on the record of said court on the 21st day of April, 1893; which said order reads and is in the words and figures following, to wit:

Ex Parte: In Re JAMES LENNON.

The petition for appeal is allowed April 21st, A. D. 1893, on filing bond in the penal sum of $250.00.

196 Afterwards, on the 21st day of April, A. D. 1893, a certificate of questions certified to the Supreme Court was filed herein and reads and is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

Ex Parte: In Re JAMES LENNON.

Certificate.

The questions certified to the Supreme Court for its decision are the questions of jurisdiction presented by the petition herein filed, to wit:

1. Is the suit in which the order was made one arising under the Constitution or laws of the United States?
2. Did the court have jurisdiction of the person of the petitioner by reason of his having had sufficient notice of the proceedings and orders set out in the petition?
3. Was it beyond the jurisdiction of a court of equity to issue the orders made in said case?

197 On April 22nd, 1893, an appeal bond was filed herein and read and is in words and figures following, to wit:

Know all men by these presents that we, James Lennon, principal, and James H. Southard, surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the United States of America or its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated on this 22nd day of April, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at a term of the United States circuit court within and for the northern district of Ohio, in a suit depending in said court, *Ex parte: In re* James Lennon, judgment was rendered against the said James Lennon dismissing his petition and for costs of proceeding, and the said James Lennon having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and having perfected his appeal to the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said James J. Lennon shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed in presence of—

JAMES LENNON. [SEAL.]
JAMES H. SOUTHARD. [SEAL.]

Approved by—
IRVIN BELFORD,
Clerk U. S. Circuit Court.

198 THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States within and for the northern district of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original pleadings and proceedings entered upon the journal of proceedings of said court in the therein-entitled cause at the term and on the day therein named; and do further certify that the same is a true, full, and complete transcript and copy thereof.

Seal of the Circuit Court, Northern Dist. of Ohio.

Witness my official signature and the seal of said court, at Toledo, in said district, this 22nd day of April, A. D. 1893, and in the 117th year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk.*

199 *Opinion of Judge A. J. Ricks in the Case for Contempt, Inserted Herein at his Request.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY COMPANY
vs.
THE PENNSYLVANIA COMPANY, LAKE SHORE & MICH. SOUTH. R'Y CO., *et al.*
} #1139. In Equity.

Statement of facts relating to the proceedings for contempt before Judge Ricks.

The original bill was filed March 11th, 1893, and the mandatory injunction set out in the opinion of the court was made on the same date.

On the 18th of March, upon an affidavit filed by the superintendent of the Michigan division of the Lake Shore & Michigan Southern railroad, the material averments of which are set forth in the opinion, a rule was entered requiring the accused, who were employees of that company, to appear and show cause why they should not be attached for contempt.

Pending the service of this order upon the accused it was made to appear to the court that there was great anxiety among the employés of the different railroads involved as to the duties expected from them under the mandatory orders made, and that some statement from the court as to the scope and object of said order would be very wholesome and beneficial.

Accordingly, when the accused were brought into court and before they were released upon their own recognizance to appear
200 from day to day and abide the further orders of the court the following admonition was given to them:

Admonition to accused.

The order of the court was made in this case, after due consideration, with full knowledge of its scope and possible consequences and with the firm purpose to enforce it in its letter and spirit without unnecessary hardship, but with such promptness and vigor as might become necessary to give full protection to all concerned.

You are now before the court under an order based upon affidavits to show cause why you should not be attached for contempt for refusing to obey the order of the court, a copy of which has been duly brought to your attention. The court proposes to give you full opportunity to employ counsel, take advice, and make all proper defenses. You are to have your day in court and be fully heard; but I desire now, at this stage of the proceedings, to suggest to you that you should not overlook the nature and importance of your

employment. You are engaged in a service of a public character, and the public are interested not only in the way in which you perform your duties while you continue in that service, but are quite as much interested in the time and circumstances under which you quit that employment. You cannot always choose your own time and place for terminating these relations. If you were permitted to do so you might quit your work at a time and place and under circumstances which would involve irreparable damage to your employers and jeopardize the lives of the traveling public.

Your employers owe a high duty to the public which they are compelled to perform under severe penalties of the law, and they have in turn a higher claim upon you and your service than that due from the ordinary employé. This court does not assume
201 the power to compel you to continue your service to your employers against your will, but it does undertake to compel you to perform your whole duty while such relations continue, and does further claim, for the purposes of ascertaining whether its orders have been violated, the right to determine when your relations to your employer legally terminated and when your obligations to observe this order ceased, so that it may in the meantime be important for you to reflect and consider whether you can safely proceed to continue in your employer's service with the purpose to quit it at a moment when some duty may be required of you which is in violation of some supposed promise or obligation you owe another not your employer. That time for leaving your post of duty might come under circumstances when you would by such act unintentionally imperil the safety of lives entrusted to your employers and do his business vast and irreparable damage. It might, too, unintentionally involve you in a conflict with the court through obstructing its process and interfering with its mandates.

I therefore suggest to you and to all others who are in similar employment that there ought not to be any strained construction made of the provisions of the court's order. The only safe way to obviate trouble is to quit the service of your employer if you do not intend to observe the orders of the court as made and which are binding upon you while that service continues. This you have a right to do, but if you continue in that employment this court will expect you to do your full duty to your employer and to the public and to observe the orders which have been made in this case.

The high character which the public justly give to the engineers and firemen who serve on our great railways has been earned by innumerable proofs of the most loyal service to employers
202 and the most heroic and faithful devotion to duties of great peril. The court has the right, therefore, to expect from such men a willing observance of the laws of the land and due respect for such orders and processes as it may be called upon to make in this case in the fulfillment of its duties to the public and the parties invoking its jurisdiction.

The hearing of the testimony on the motion for contempt was begun on Tuesday, March 21st, and continued from day to day. Argument of counsel was heard, and the decision of the court was

announced on Monday, April 3rd. The following is a full and correct copy of the opinion:

203 In the Circuit Court of the United States for the Northern District of Ohio, Western Division.

THE TOLEDO, ANN ARBOR & NORTH MICHIGAN RAILWAY COMPANY
vs.
THE PENNSYLVANIA COMPANY, LAKE SHORE & MICH. SOUTH. R'Y CO., *et al.*
1139. In Equity.

Opinion of the Court.

RICKS, *J.:*

This suit was instituted by the Toledo, Ann Arbor & North Michigan Railway Company to compel The Lake Shore & Michigan Southern Railroad, The Pennsylvania Company, and other defendants to receive from it and deliver to it freight and cars destined from one State to another, commonly known as interstate freight, which it avers the defendants have refused to do since March 11th, 1893, because complainant has employed as locomotive engineers in its service men who are not members of the Brotherhood of Locomotive Engineers. The bill further avers that the defendants continue to afford to other railroads full and free facilities for interchange of traffic, thereby illegally discriminating against it. The bill was drawn to enforce the third section of the interstate commerce act, which provides: "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The common carriers subject to the provisions of this act
204 are defined by the statute to be "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States." * * *

The subject-matter of this litigation is therefore the construction and enforcement of an act of Congress, and the court acquires jurisdiction because of the Federal question involved. That such question is involved I think too plain for serious controversy. It is sufficient to constitute a case for cognizance by a Federal court if it involves but a single ingredient or question dependent on the Constitution or a law or a treaty of the United States, although it may at the same time involve any other questions that depend on

the general principles of law. Chief Justice Marshall, in Osborn *vs.* U. S. Bank, 9 Wheaton, 738, considered this point, and came to the following conclusion: "We think, then, that when a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original case, it is in the power of Congress to give circuit courts jurisdiction of that cause, although other questions of fact or law may be involved in it." Remedies of a similar nature might undoubtedly be invoked under statutes and the common law, but the act in question affords the broadest and most effective relief, and the jurisdiction is therefore safely grounded upon that law.

Upon the filing of this bill on the 11th day of March, and upon application of the complainant to me at chambers, in Cleveland, a mandatory injunction was allowed, directed to the defendants,
205 their agents, officers, servants, and employés, and it was therein ordered "that the said defendants, Albert G. Blair, Jacob S. Morris, The Pennsylvania Company, The Wheeling & Lake Erie Railway Company, The Lake Shore & Michigan Southern Railway Company, The Michigan Central Railroad Company, The Cincinnati, Hamilton & Dayton Railroad Company, The Columbus, Hocking Valley & Toledo Railway Company, The Toledo & Ohio Central Railway Company, The Cincinnati, Jackson & Mackinaw Railway Company, and each of them and their officers, agents, servants, and employés be, and they are hereby, enjoined and restrained from refusing to offer and extend to said The Toledo, Ann Arbor & North Michigan Railway Company the same equal facilities for interchange of traffic on interstate business between said railway companies as are enjoyed by other railway companies, and from refusing to receive from said The Toledo, Ann Arbor & North Michigan Railway Company cars billed from points in one State to points in another State which may be offered to said defendant companies by the complainant, and from refusing to deliver in like manner to said complainant cars which may be billed over complainant's line from points in one State to points in other States.

"Ordered that a writ of injunction be issued out of and under the seal of this court, as prayed for in the bill of complaint, to remain in force until the further order of the court herein."

The application for this order was made to me at chambers, in Cleveland, late on Saturday night, March 11th. The situation set out in the bill disclosed an emergency in which prompt action was necessary. I had granted a similar mandatory order in 1891 on a bill for an injunction filed in this court by the Wheeling & Lake Erie railroad, and it was enforced with beneficent results as
206 against its engineers, firemen, and trainmen, who had refused to handle interstate-commerce freight loaded on cars consigned to various ports on Lakes Superior and Michigan. The bill in this case clearly entitled the complainant to relief as against the defendant railroads who were threatening to refuse to receive or deliver interstate freight.

The section of the interstate-commerce law above quoted made it mandatory upon connecting railroads to receive and deliver pas-

sengers and freight and to afford equal facilities for the interchange of traffic. Corporations can act only through their officers, agents, and servants, so that the mandatory provisions of the law which apply to the corporation apply with equal force to its officers and employés.

It has been urged by counsel for the accused that they should have been made parties defendants, should have been served with notice of the application for an injunction, and that notice of the allowance of the order should have been given to them the same as to the defendant railroads in order to now authorize the court to find that they had such notice as to hold them for contempt. We do not concede this proposition. As has just been stated, a corporation can act only through its officers and employés and a duty imposed by law or by an order of a court of competent jurisdiction upon a corporation applies to the officers and employés of that corporation and takes effect as to them so soon as they are in fact properly notified of the nature and scope of the law or order. Writs of injunction, of whatever nature they may be, when directed to a corporation, always run against it and its agents, servants, employés, &c., &c. The order now before us was so allowed and it was so issued. It would very much embarrass the courts in administering the law if counsel are right in this contention. The diffi-
207 culties would almost be insuperable if it were necessary to make all the several thousand employés of the defendant railroad parties before the orders and processes of the court become effective as to them. They are part of the instrumental force of their respective corporations, and in that respect a part of them.

It is therefore sufficient, I think, if in fact they are served with full and proper notice of the orders and processes of the court, to make them binding upon them. It is not necessary to make them parties.

The authority of the court to issue such an order has been questioned, but it rests on well-established principles. In Beadel *vs.* Perry, L. R., 3, Eq., 465, a mandatory injunction was granted on motion by Sir John Stewart, V. C. In giving judgment in that case he said: "Reference has been made to a supposed rule of court that mandatory injunctions cannot properly be made except at the hearing of the cause. I never heard of such a rule. Lord Cottenham was, so far as I know, the first judge who proceeded by way of mandatory injunction, and he took great care to see that the party applying was entitled to relief in that shape."

In Coe *vs.* L. & N. R. R., 3 Fed. Rep., 775, when application was made to Judge Baxter, of the United States circuit court at Nashville, Tenn., for a mandatory injunction restraining the defendant from discriminating against the complainant's business in handling live stock, and especially from inhibiting persons from consigning live stock to complainant's yards, that learned judge said: "Ought a mandatory order to issue upon this preliminary application? Clearly not, unless the urgency of the case demands it and the rights of the parties are free from reasonable doubt. The duty

which complainants seek by this suit to enforce is imposed
208 and defined by the law—a duty of which the court has judicial knowledge. The injunction compelling its performance pending this controversy can do the defendant no harm, whereas a suspension of the accom-odations would work inevitable and irreparable mischief to the complainant. The injunction prayed for will therefore be issued."

In the case now under consideration the duty which the complainant seeks to have enforced is defined by the law, and the rights of the parties are free from doubt, so that it seemed a proper case for the order to issue, and it was therefore allowed.

This order was served upon the several defendants, and the Lake Shore & Michigan Southern railroad, through its general superintendent, Mr. Canniff, made publication of the order in such a way as to bring it to the attention of its employés, and particularly to those of its engineers driving engines on the Detroit division, where the interchange of cars with the Ann Arbor road was frequent.

On the 18th of March an affidavit made by the superintendent of the Michigan division of the Lake Shore & Michigan Southern railroad was filed, alleging that certain of its employés, whilst in the service of said company and with full notice and knowledge of the injunction theretofore made, had refused to obey the orders of the court, and upon that affidavit an application was made by said company for an attachment to issue against the employés so named "as being in contempt of the restraining order of the court." The court declined to make the order in the form applied for, but directed one to be entered requiring the engineers and firemen named to appear in court forthwith and show cause why they should not be attached for contempt. This is the usual and well-established practice in such cases in this district, as numerous precedents in the past ten years will show.

209 It is said the orders issued in this case are without precedent. Every just order or rule known to equity courts was born of some emergency to meet some new conditions and was therefore in its time without a precedent. If based on sound principles and beneficent results follow their enforcement, affording necessary relief to the one party without imposing illegal burdens on the other, new remedies and unprecedented orders are not unwelcome aids to the chancellor to meet the constantly varying demands for equitable relief.

Mr. Justice Brewer, sitting in the circuit court for Nebraska, said: "I believe most thoroughly that the powers of a court of equity are as vast and its processes and procedure as elastic as all the changing emergencies of increasingly complex business relations and the protection of rights can demand."

Mr. Justice Blatchford, speaking for the Supreme Court in Joy *vs.* St. Louis, in 138th U. S., said: "* * * It is one of the most useful functions of a court of equity that its methods of procedure are capable of being made such as to accommodate themselves to the

development of the interests of the public in the progress of trade and traffic by new methods of intercourse and transportation."

The spirit of these decisions has controlled this court in its action in this case.

Before proceeding to pass upon the evidence as to whether the men now before the court under charges for contempt are guilty or not, it may be profitable to consider the general principles of law applicable to the duties with which the accused were charged by the orders issued to them and to their employers. They were in the employ of the defendant The Lake Shore & Michigan Southern Railroad at the time the orders in this case were made com-
210 pelling it to receive from the Ann Arbor road all the interstate freight it might tender. The testimony shows that the terms of this order were made known to the employés generally, and that they were thoroughly advised of its scope and mandatory provisions. That their employer was obligated, both under the general provisions of the interstate-commerce law and under this order of the court, to receive and haul all interstate freight must have been known to them. They must also be held to have known that the penalties of the law were severe in case their employer violated either the law or the order of the court. Holding to that employer so engaged in this great public undertaking the relation they did, they owed to him and to the public a higher duty than though their service had been due to a private person. They entered its service with full knowledge of the exacting duties it owed to the public; they knew that if it failed to comply with the laws in any respect severe penalties and losses would follow for such neglect. An implied obligation was therefore assumed by the employés upon accepting service from it under such conditions that they would perform their duties in such manner as to enable it not only to discharge its obligations faithfully, but also to protect it against irreparable losses and injuries and excessive damages by any acts of omission on their part. One of these implied conditions on their behalf was that they would not leave its service or refuse to perform their duties under circumstances when such neglect on their part would imperil lives committed to its care or the destruction of property involving irreparable loss and injury or visit upon it severe penalties. In ordinary conditions as between employer and employé, the privilege of the latter to quit the former's service at his option cannot be prevented by restraint or force. The remedy for breach of contract may follow to the employer,
211 but the employé has it in his power to arbitrarily terminate the relations and abide the consequences; but these relative rights and powers may become quite different in the case of the employés of a great public corporation charged by the law with certain great trusts and duties to the public. An engineer and fireman who start from Toledo with a train of cars filled with passengers destined for Cleveland begin that journey under contract to drive their engine and draw the cars to the destination agreed upon. Will it be claimed that this engineer and fireman could quit their employment when the train is part way on its route and abandon it at some point where the lives of the passengers would be imperilled

and the safety of the property jeopardized? The simple statement of the proposition carries its own condemnation with it. The very nature of their service, involving as it does the custody of human life and the safety of millions of property, imposes upon them obligations and duties commensurate with the character of the trusts committed to them. They represent a class of skilled laborers, limited in number, whose places cannot always be supplied. The engineers on the Lake Shore & Michigan Southern railroad operate steam-engines moving over its different divisions 2,500 cars of freight per day. These cars carry supplies and material, upon the delivery of which the labor of tens of thousands of mechanics is dependent; they transport the products of factories, whose output must speedily be carried away to keep their employés in labor. The suspension of work on the line of such a vast railroad by the arbitrary action of the body of its engineers and firemen would paralyze the business of the entire country, entailing losses and bringing disaster to thousands of unoffending citizens. Contracts would be broken, perish-
able property destroyed, the traveling public embarrassed,
212 injuries sustained, too many and too vast to be enumerated.

All these evil results would follow to the public because of the arbitrary action of a few hundred men who, without any grievance of their own, without any dispute with their own employer as to wages or hours of service, as appears from the evidence in this case, quit their employment to aid men, it may be on some road of minor importance, who have a difference with their employer which they fail to settle by ordinary methods. If such ruin to the business of employers and such disasters to thousands of the business public, who are helpless and innocent, is the result of conspiracy, combination, intimidation, or unlawful acts of organizations of employés, the courts have the power to grant partial relief, at least, by restraining employés from acts of commission of violence or intimidation or from enforcing rules and regulations of organizations which result in irremediable injuries to their employers and to the public.

It is not necessary for the purposes of this case to undertake to define with greater certainty the exact relief which such cases may properly invoke; but that the necessities growing out of the vast and rapidly multiplying interests following our extending railway business make new and correspondingly efficient measures for relief essential is evident, and the courts, in the exercise of their equity jurisdiction, must meet the emergencies as far as possible within the limits of existing laws until needed additional legislation can be secured.

The evidence in this case shows in a strong light the unreasonableness of some of the rules and regulations under which employés consent to be governed in their own labor organizations. It appears from the evidence that, under the terms of their employment, the
Lake Shore & Michigan Southern railway, though empow-
213 ered to suspend or discharge its engineers, must thereafter grant them a fair and impartial hearing within a reasonable time, and, if found blameless, they must be paid such wages as they

would have earned during the time of suspension or discharge; but the engineers on their part, by their action in this case, claim the right to quit the company's service without a moment's notice and without cause. Every engineer and fireman conceded on the witness stand that he was perfectly satisfied with his wages, perfectly satisfied with his hours for labor and with his employer in every respect, and would be glad to continue in the company's employ, but admitted that he had quit the service arbitrarily and without notice, because of the boycott against the Ann Arbor road. While denying that there had been any understanding or agreement or any rule or notice by which all had arbitrarily left the company's service, the evidence shows such a uniform line of action, such a unanimity in the manner of quitting, and the reasons assigned, as to convince me that there was a common design and a common purpose in what they did. Each one of them admitted that when he was asked if he would continue in the company's employ and obey the order of the court if the boycotted cars or freight were taken out of his trains, he had agreed to do so. This clearly shows that they were controlled in their acts not by any grievance they had against their own employer, but by a rule or order which has since been brought into court and which my associate, Judge Taft, will deal with in his opinion.

Now, let us apply these general principles of equity, which are consistent with every rule of natural law and justice, to the facts of this case so far as they affect those now charged with contempt of court. The evidence shows that, according to the rules and customs of the company, the engineers were paid $3.75 for a run of 100 miles,
214 and were paid for overwork. The time for computing compensation began at the hour they were called to leave the yard and ended when they gave up their engines in the yard, and they were entitled to pay for that time, even though their engines did not move a wheel. Their service was therefore due to the company from the hour when their compensation began. The period of service continued during the time usually occupied in making the run for which they were called. During that period they were constantly subject to the orders of the company, and by custom and usage the relation of employer and employé was in force for that time. This is the most limited period that can be claimed for their term of service under the evidence before me.

On the afternoon and night of the 17th of March a train of cars was made up in the yards of the Lake Shore & Michigan Southern road at Air Line Junction, destined for Detroit. About six o'clock p. m. Engineer Clark and Fireman Thompson were called to make the run. They prepared their engine, ran it into the yard, and backed down to within a half car-length of the train, and, before coupling it, learned that the first seven cars were billed for Alexis and intended for the Ann Arbor road. Thereupon Clark took his clothes from his box, announced to an officer of the company that he would quit its service, and, proceeding to the office, turned over his book of rules to the officer in charge. A call was then sent out for Engineer Case and Fireman Kessler. They brought their en-

gine to the train, coupled it, and, on learning from the conductor that seven cars were to be delivered at Alexis, Case said he would quit the service, and did so. A call was then sent out for Engineer Rutger and Fireman James, and their engine was brought out and coupled to the train. When Rutger learned that Alexis cars
215 were to be delivered, he quit his employment and left the yard, having turned over his book of rules. A call was then sent out for Engineer Conley and Fireman Westgate, whose engine was in the same way coupled to the train. Conley declined to haul the Alexis cars and quit the company's employment. He offered to run the train out if the obnoxious cars were removed.

It is unnecessary to state the evidence more in detail. The proof is clear that all of these engineers and firemen fully understood the order of the court and knew that if they continued in the company's service they would be compelled to obey it. Rather than do that they quit their employment. Had they the right to do so under the circumstances surrounding them? The train which they refused to haul was safely stored in the company's yard. No special injury resulted from their refusal to continue in the service. No lives were imperiled and no property jeopardized by their act. These facts clearly present extreme cases where a court of equity is asked to enforce the performance of contracts for personal service. The engineers were all bound by their terms of employment to haul the train to Detroit. They had been regularly called for service and entered upon it and were in law obligated to continue in that service for the period of twelve hours, which covered their run. They have broken their contract, and the employer has its remedy at law, inadequate though it be.

But this court recognizes to its fullest extent the large measure of personal liberty permitted to employés, and, while it feels they have violated their contract of service, it disclaims any power to compel them to continue that service against their will under the facts of this case. The insuperable difficulties attending an attempt to en-
force the performance of continuous personal service have
216 heretofore deterred courts of equity from undertaking to grant relief in such cases; but in the varying circumstances under which the employer's rights to such relief are presented it often happens that adequate protection is possible by restraining the employés from refraining to do acts which they have combined and conspired to do, and the inhibiting of which secures the relief to which the employer is clearly entitled. By such modes of procedure courts of equity are often able to afford protection where they could not do it by attempting to enforce specific performance. But it is urged that while the court might not have had the power to compel performance of service in these cases, it has power to punish for contempt those who refused to obey its orders; but if the court could not compel the employé to perform by continuing in service, it would not be a contempt of court on the employé's part to exercise the right to quit the service. If the employé quits in good faith unconditionally and absolutely, under such circumstances as are now under consideration, he is exercising a personal

right which cannot be denied him; but so long as he continues in the service, so long as he undertakes to perform the duties of engineer, or fireman, or conductor, so long the power of the court to compel him to discharge all the duties of his position is unquestionable and will be exercised. As hereinbefore intimated, the duties of an employé of a public corporation are such that he cannot always choose his own time for quitting that service, and so long as he undertakes to perform and continues his employment the mandatory orders of the court to compel all lawful service can reach him and be enforced. The circumstances when this freedom to quit the service continues and when it terminates it is not now necessary to determine, but there certainly are times and conditions when such right must be denied.

217 The cases cited by counsel in which public officers have not been permitted to resign to avoid the mandatory orders of a court do not apply here. A different principle is there involved. In most cases the tenure of office continues until a successor is chosen and qualifies. The officer chosen and exercising the functions of his office owes a duty to the public, and is charged with an obligation to perform certain acts which he ought not to be permitted to evade by resignation. The rule of law that holds such a person even against his will to his post of duty to protect the public against an omission to perform a duty which is necessary for its good and perhaps for the continuous and safe operation of the Government in some of its forms cannot be justly applied to an employé, laboring, perhaps, only under an implied contract, who sustains quite a different relation both to the public and his employer.

It is our duty to deal with the facts of these cases as they are presented. The parties now charged with contempt must be tried on those facts as they have been made to appear, and, having fully considered them, I conclude that Engineers Clark, Case, Rutger, and Conley and their firemen as named were not guilty of violating the orders of the court whilst in the service of their employer, as alleged in the affidavit charging them with contempt, but quit the service of the Lake Shore & Michigan Southern railroad under circumstances when they had a right to do so, and that they are not therefore in contempt of court because of such conduct, and they will be discharged.

In reaching this conclusion I have treated these cases as criminal in their character and given the accused the benefit of the reasonable doubt, especially as to the extent to which they had conspired to act concertedly in quitting the service in a way to injure

218 their employer and aid in enforcing a boycott. An act when done by an individual in the exercise of a right may be lawful, but when done by a number conspiring to injure or improperly influence another may be unlawful. One or more employés may lawfully quit their employer's service at will, but a combination of a number of them to do so for the purpose of injuring the public and oppressing employés by unjustly subjecting them to the power of the confederates for extortion or for mischief is criminal.

We do not therefore here determine that a conspiracy entered into

by the employés of one railroad to boycott another railroad may not exist under circumstances of aggravation such as to make it entirely proper for a court of equity in dealing with such conspiracy to prevent an employé from quitting the service in which he is engaged solely as a means of carrying out his part in such conspiracy and for no other purpose than to aid in enforcing such boycott.

But the conduct of Engineer Lennon presents quite a different case. He was on his run from Detroit to Air Line Junction with a train of forty-five cars. He reached Alexis station at 10.07 a. m., and was there ordered to take an empty car from the Ann Arbor "Y" for Air Line Junction. This was one of the boycotted cars. He refused to switch the car into the train and held it there against positive orders from 10.07 a. m. to 3.15 p. m., and then proceeded on his run, after receiving a dispatch from the chairman of the grievance committee, which read as follows: "You can come along and handle Ann Arbor cars." That message meant that the boycott had been raised. Though Lennon had been twice ordered by telegraph by the officers of the road to come on with his train, he refused to do it, but promptly moved it when he got permission to do so
219 from one who had no official relation to the company and no right to interfere with the movement of its trains. When he received the order at Alexis to take the Ann Arbor car he refused and said, "I quit." He afterwards agreed with the superintendent of the Detroit division to take his train to its destination if the order to take the boycotted car was countermanded. He remained with his engine and brought his train to Air Line Junction. When he arrived at that point as the termination of his run he says in his testimony that "the caller told me when I registered, 'You get 134.' I said, 'All right, I'll be up.' It was his duty to give me such notice." Though he claims to have quit at Alexis about ten o'clock in the morning, he brought his train to its destination, and, when told what his next run would be, gave no notice of having quit or of intending to quit. This is satisfactory evidence that he did not quit in good faith in the morning, but intended to continue in the company's service, and that his conduct was a trick and device to avoid obeying the order of the court. He admitted having seen the court's order when confronted with it at Alexis. It was shown to him in printed form, easily to be read and understood. From his own admission he had sufficient knowledge of its nature to at least put him upon inquiry as to its exact scope and effect. He knew it related to his duties as engineer under the very condition then confronting him, and if he had been anxious to do his duty and respect the orders of the court he had an exceptionally good opportunity to read and fully consider it during the hours he was holding that train at Alexis against the positive orders of his superior officers; but he failed to do so and persisted in his defiance both of the regulations of his employer and of the injunction of the court during all the hours mentioned. I cannot conceive of any prin-
220 ciple of law under which such conduct can be justified. An engineer cannot be permitted to pretend to quit the service

of his company in the manner stated, with his train on the main track ten miles from its destination, and for the evident purpose of evading an order of court which was equally in force against employer and employé. If such an abandonment of service could be excused in law it would leave this great corporation, operating 1,500 miles of railway and moving several hundred trains of cars per day, at the mercy of its employés and subject the public, with its multitude of interests and rights, to irremediable injuries and losses.

Upon the facts of the case made against Engineer James Lennon I find that he did not quit the service of the company in fact and did not intend to do so, and that his pretense to do so was a trick to evade the order of the court. Being in the service of the company when he refused to switch the Ann Arbor car into the train at Alexis, and having then full knowledge of the terms and meaning of the order of the court, that order was then in full force and commanded him to do the very thing he refused to do. He therefore deliberately and knowingly violated the mandate of the court and was guilty of contempt.

I accept the protestations of Mr. Lennon, made under oath, that he did not intend to disobey the orders of the court and did not believe he was violating the laws of the United States. He is a member of the Brotherhood of Locomotive Engineers and supposed that while acting under its rules he was not arraying himself against the laws of his country. This suit has afforded the courts an opportunity for declaring the laws applicable to such emergencies and the public interests have been thereby subserved. This does not, therefore, seem to me to be the occasion when it would be
221 wholesome or wise to administer an exemplary punishment. The object of the court is to uphold and vindicate the laws without, under these circumstances, showing a disposition to oppress or punish those who have evidently been misled.

With these views of my duty, an order will be entered that the accused, James Lennon, stands adjudged as guilty of contempt and pay a fine of $50.00 and the costs of this proceeding, upon payment of which he will be discharged from the further orders of the court.

The orders made in this case as to all the connecting roads and their employés who have continued in the service are still in full force, and it is but just to all concerned that the court should say that, the laws and orders having now been fully interpreted and made public, any violations thereof that may hereafter occur will be dealt with in a spirit and purpose quite different from that which has controlled us in this case.

222 [Endorsed:] 1139. United States circuit court, northern district of Ohio, western division. The Toledo, Ann Arbor & North Michigan Railway Company *vs.* The Pennsylvania Company, Lake Shore & Mich. South. R'y Co., *et al.* Opinion of the court. Filed Apr. 3, 1893.

Endorsed on cover: Case No. 15,302. N. Ohio C. C. U. S. Term No., 1332. *Ex parte:* In the matter of James Lennon, appellant. Filed April 24, 1893.

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APR 25 1893
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

EX-PARTE JAMES LENNON, No. 1332.

Appeal from the Circuit Court of the Northern District of Ohio, Western Division.

Motion to Advance.

STATEMENT.

The petitioner, James Lennon, was a locomotive engineer on the Lake Shore and Michigan Southern Railroad, and was arrested on the 18th day of March, 1893, charged with contempt for disobedience of a preliminary restraining order issued by said circuit court restraining the Lake Shore and Michigan Southern Railroad Company and the other defendant companies, their officers, agents, servants, and employés, from refusing to offer to the Toledo, Ann Arbor and Northern Michigan Railroad Company all reasonable and proper and equal facilities for the interchange of traffic with the said Toledo, Ann Arbor and Northern Michigan Railroad Company, and from refusing to receive from said Toledo, Ann Arbor and Northern Michigan Railroad Company, for transportation over their respective lines of

railroad, any and all cars of freight which may be tendered to them by said Toledo, Ann Arbor and Northern Michigan Railroad Company, and from refusing to deliver to said Toledo, Ann Arbor and Northern Michigan Railroad Company all cars of freight which may be billed over its line of railroad from said defendant companies in like manner as heretofore.

The circuit court adjudged him guilty of contempt and fined him fifty dollars, and ordered that he be imprisoned until the fine was paid. The fine has not been paid, and he is in custody.

He applied to the circuit court for a writ of *habeas corpus*. His application was rejected and he appealed to this Court.

The origin of the troubles which were the occasion of the issuing of that order was an action begun by the Toledo, Ann Arbor and Northern Michigan Railroad Company against the Pennsylvania Railroad Company and five other railroad companies, including the Lake Shore and Michigan Southern Railroad Company and Albert G. Blim, general manager of the Wheeling and Lake Erie Company, and Jacob S. S. Morris, the superintendent of the Pennsylvania Company.

In that action the complainant avers that it is a corporation existing under the laws of Michigan, and is a citizen of that State; that all the defendant companies are corporations duly incorporated under the laws and are citizens of the State of Ohio, except the Pennsylvania Company, which is incorporated under the laws of and a citizen of the State of Pennsylvania, and that the complainant company is a common carrier of freight and passengers under the statutes of the United States, Ohio, and Michigan; that the defendant companies, their officials, agents, and employés, have, ever since the 11th day of March, 1893,

given out and threatened that they will refuse to receive from the complainant company cars offered or to be offered by compainant company, and that they will not deliver to the complainant company cars billed over its road for transportation by complainant to their destination, for the reason that complainant has employed as locomotive engineers in its service men who are not members of the Brotherhood of Locomotive Engineers, while the said defendant companies continue to afford to other railroad companies full and free facilities for interchange of traffic, but refuse to transact such business with complainant, thereby discriminating illegally against complainant company.

It then sets forth that no just reason exists for such discrimination, and that if it is continued an important part of its business will be at a stand-still and the transaction of said interstate commerce will be paralyzed, to its irreparable loss and injury.

It further sets forth that substantially all the business it transacts with defendant companies consists of interchange of cars containing freight consigned from points in one State to points in another State, and comes under the provisions of the Interstate Commerce Act, and that all its business of interchange of cars with said defendant companies is transacted within the jurisdiction of this court (northern district of Ohio, western division).

The complainant then prays for an injunction perpetually enjoining and restraining the defendant companies, their officers, agents, servants, and employés, from refusing to offer to complainant all reasonable, proper, and equal facilities to the interchange of traffic with complainant, and from refusing to receive from complainant for transportation on their respective lines of railroad any and all cars of freight which may be tendered to them by complainant, and from refusing to deliver to complainant all

cars of freight which may be billed over complainants' line of railroad from defendant companies in like manner as heretofore.

A provisional or preliminary restraining order was issued restraining the said defendant companies as prayed for.

This restraining order was served on the defendant railroad companies, but was not served on the defendant James Lennon or on any of the locomotive engineers in their employ.

The applicant for the writ of *habeas corpus* in this case was, at that time, a locomotive engineer in the employ of the Lake Shore and Michigan Southern Railroad Company, one of the defendant railroad companies in that proceeding, and there was no agreement between him and said company as to the time said railroad company should retain him in its employ, nor as to the time he should continue in its service, said company having the right at its pleasure to discharge him from its service, and he having the corresponding right to quit its service at his pleasure.

After the said restraining order had been issued Lennon, who was a resident of Toledo and easily accessible to the officers of the court, was never served with a copy of the order, and was in no way directly notified of its contents.

The order had been placed on the bulletin-board in the round-house at Air Line Junction in Toledo on the evening of March 17th. Early on the morning of March 18th Lennon took out his train to Detroit. He went to the bulletin-board to learn whether there were any orders affecting him or his train, and, finding nothing, he started on his trip. He did not see or read the order.

On the same morning he started on his return trip from Detroit to Toledo. He did not see any order in Detroit, nor was he informed of any before he started. On his

way back to Toledo, when he reached Alexis he was signalled to stop for orders. When he stopped, the conductor went to the station agent and found that there was a car to be taken from the Ann Harbor road to be delivered at Toledo. Thereupon Lennon said he would quit the service of the company rather than take the car.

After he had said he would quit, the station agent gave him a copy of the order, which Lennon says he then saw for the first time. It is true that the station agent and conductor both say that Lennon said he had seen the order before and knew its contents. Lennon, however, says on the witness stand that he had never seen the order before he had quit the service, and that he did not even then, at the time of the hearing, fully understand its contents.

After Lennon had quit the service, he took his train and placed it on a side track where it was in a situation in which it could not be injured, nor inflict injury upon persons or property.

The train there remained until about four o'clock in the afternoon, when at the request of the officers of the company, and acting upon information he had received from some of his brother engineers, he took the car from the Ann Arbor track with his train, and brought it to Toledo, where he safely delivered it to the custody of the company.

On these facts it is claimed, first, that Lennon had no such notice of the order of the court as to warrant it in adjudging him guilty of contempt, and, secondly, that the act of quitting the service of the company under the circumstances proved was not a violation of the order of injunction, which could only, in any view, operate upon him while he remained in the service of the company.

It also appears from the proof that the Michigan Central Railroad Company is a corporation of Michigan, the

same State as that of which the complainant in the original bill was a citizen. The court, therefore, had no jurisdiction on the ground of diverseness of citizenship, and could only entertain the case on the ground that the bill presented a federal question.

The bill claims that the act of the defendants threatened will be in violation of the Interstate Commerce Act, and that the duties which the suit is brought to compel the defendants to perform are imposed by the provisions of that act.

It is insisted, however, that the duties, the performance of which the bill seeks to compel, were devolved upon defendants by the common law; that complainant is entitled to his relief without regard to the Interstate Commerce Act, and that in the suit no question under that act arises or is presented.

It is also claimed that a court of equity has no power to issue an injunction to enforce the performance of a personal contract for services, and that, if the effect of the order issued in the case was to compel the petitioner to remain in the service of the railway company, the order was void and that petitioner was not guilty of contempt in violating it, and therefore is illegally restrained of his liberty and entitled to the writ of *habeas corpus*.

It is apparent from the foregoing, that the questions involved in this case are of the highest importance. They involve vast interests and it is very desirable that they be judicially determined by the highest tribunal in the land, and at an early date.

G. M. BARBER,
FRANK H. HURD,
WALTER H. SMITH,
Attys. for Petitioner.

MAY 1, 1893.

Office Supreme Court U. S.
FILED.
OCT 31 1893
JAMES H. McKENNEY,
CLERK.

CASE NO. 15,302.

Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM NO. 925.

IN RE JAMES LENNON. Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

BRIEF OF COUNSEL FOR APPELLANT.

G. M. BARBER.
WALTER H. SMITH.
FRANK H. HURD.
JAMES H. SOUTHARD.
Attorneys for Appellant.

In the Supreme Court of the United States

In Re James Lennon, Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

STATEMENT OF FACTS.

On March 11th 1893 the Toledo, Ann Arbor and North Michigan Railway Company filed its bill of complaint in the Circuit Court of the United States for the Northern District of Ohio, Western Division, against the Lake Shore and Michigan Southern Railway Company and other railroad companies which connected with the complainant in the carrying on of inter-state commerce. The bill charged that it was the duty of defendant, under the act of Congress of February 4, 1888, and the amendments thereto regula-

ting commerce between the states, to afford all reasonable, proper and equal facilities for the interchange of traffic with complainant, and to receive, forward and deliver cars of freight in the ordinary transaction of its business, from and to the complainant without discrimination.

The bill then avers that the said defendant companies, their officials, agents and employes have threatened that they will refuse to receive from complainant cars offered by it, and that they will not deliver to complainant cars billed over its road for transportation by complainant to their destination, and that because complainant has employed as locomotive engineers, men who are not members of the Brotherhood of Locomotive Engineers, the locomotive engineers in the employment of defendant companies have refused to handle cars to be interchanged with complainants railroad. Bill also avers that the defendant companies continue to afford to other companies full and free interchange of traffic while refusing to transact business with complainant, thereby discriminating illegally against complainant.

Bill then charges that if these threats shall be carried out, irreparable damage will be done complainant and therefore prays for an injunction.

The prayer is for an order enjoining "the defendant companies, their officers, agents, servants and employes from refusing to offer to your orator all reasonable and proper and equal facilities to the interchange of traffic with your orator, from refusing to receive from your orator for transportation over their respective lines of said road any and all cars of freight which may be tendered to them by your orator, and from refusing to deliver to your orator all cars of freight which may be billed over your orators line of

railroad from said defendant companies in like mannner and as heretofore."

On the 11th of March Judge Ricks at chambers granted a preliminary order of injunction restraining among others the Lake Shore and Michigan Southern Railway Company, its officers, servants, agents and employes from (1) refusing to offer and extend to the said Toledo, Ann Arbor and North Michigan Railway Company the said equal facilities for interchange of traffic on interstate business between said railway companies, (2) and from refusing to receive from said Toledo, Ann Arbor and North Michigan Railway Company cars billed from points in one state to points in another state which may be offered to said defendant companies by the complainant and (3) from refusing to deliver in like manner to said complainant cars which may be billed over complainants line from points in one state to points in other states.

Then it is ordered that a writ of injunction be issued out of and under the seal of this court as prayed for in the bill of complaint, to remain in full force until the further order of the court herein.

On March 18th the Lake Shore and Michigan Southern Railway Company filed its application for an order of attachment against certain engineers and firemen in their service. Among these was James J. Lennon, the appellant in this proceeding.

It charges that on March 17, 1893, there was "upon the tracks and in the yards of said Lake Shore and Michigan Southern Railway Company to be delivered to the Toledo, Ann Arbor and North Michigan Railway Company a number of cars laden with freight shipped from within the State of Ohio and consigned to place without said state, to

be by said the Toledo, Ann Arbor and North Michigan Railway Company hauled over its line within and beyond the State of Ohio and to be delivered to other connecting carriers therein.

"That upon receipt of said cars and freight by the said Lake Shore and Michigan Southern Railway Company upon March 17, 1893, certain of said Lake Shore employes to-wit: * * James Lennon * * locomotive engineer in charge of its locomotive engine having theretofore had full notice of the order heretofore made, and of the law applicable to the case, and while in the service of said company refused to obey the order and mandate of the court in said cause and deserted their locomotives and engines in the yard of said company, for the reason that Ann Arbor cars of freight were in the trains of said company, said employes, in fact refusing to haul said cars and perform their service for the reason that there were Ann Arbor cars in said train."

The application further sets out that the action of said engineers in refusing to perform said service was following out a plan theretofore made by said engineers in an organization of locomotive engineers.

The application charges that by the act of these engineers the Lake Shore Company has not been able to fully perform and obey the orders of said Court as herein made.

Therefore the Lake Shore Company asks for an attachment against Lennon as being in contempt of the restraining order of the Court.

On March 18th an order was issued against Lennon, among others, requiring him to appear forthwith and show cause why he should not be attached for contempt in disobeying the said order of the Court.

Service of this order was made upon Lennon on the same day.

On the 20th of March Mr. Lennon appeared before the Court to show cause. Evidence was introduced and such proceedings were had that Mr. Lennon was adjudged guilty of contempt and and ordered to pay a fine of fifty dollars and costs, and stand committed until they should be paid. Lennon refusing to pay was committed to the custody of the Marshal for the Northern District of Ohio.

To release him from this custody an application for a writ of habeas corpus was made to the Circuit Court for the Northern District of Ohio, Western Division. The application was refused, and from the order refusing the application an appeal was taken to this Court.

EVIDENCE SUBMITTED AT THE HEARING.

The appellant James Lennon was a locomotive engineer in the service of the Lake Shore and Michigan Southern Railway Company (p. 153). On March 18th he was engineer in charge of the locomotive of a freight train which left Monroe, Michigan, at 9:15 in the morning on its trip to Toledo, Ohio.

It arrived at Alexis a station in the State of Ohio at 10 o'clock. What was known as an order board was up at that point, indicating that the train was to stop. Alexis was the station at which the complainants road crossed the track of the Lake Shore and Michigan Southern Railway Company. The tracks of the two roads were connected by a track called a "Y" on which cars from one road were placed to be taken to the other when they were so billed by the shipper.

In obedience to the signal given by the order board the engineer stopped at Alexis at the station on the south side of the Ann Arbor crossing. (p. 155) The brakeman went over to the office and learned that there was a car to go which had come from the complainants road and which was standing on the "Y". This car was a Lake Shore car and empty (p. 77) and billed for West Toledo (p. 72) a station in Ohio. The conductor went to the telegraph office and received an order to take the car further south which order he handed to Lennon, whereupon Lennon said, "I quit" (p. 155–6). Lennon then took his train on to a side track where it remained until 3 o'clock in the afternoon (p. 156). After considerable correspondence by telegraph between Lennon and officers of the Lake Shore road, and officers of the Brotherhood of Locomotive Engineers, Lennon consented to take the train from Alexis to Toledo. (p. 76-77-156-157-112) and did so. After he had delivered the car at West Toledo he brought his train to Air Line Junction, and has not been in the service of the Lake Shore Company since (p. 158).

Lennon says that at time he quit the service of the company he had no notice of the order which had been issued by the court. In his affidavit (p. 12) he denies "that during the time he was in the service of the company he had any notice or knowledge of the contents of the order and mandate made by Hon. Judge Ricks in the above cause."

On page 155 there is found:

"Q. I will ask you whether before you started for Detroit (Monroe) or at any time up to the time that you quit the service of the company, you had in your possession

or whether you had seen or heard or read the order made by this Court?"

"A. I had not."

"Q. Whether you knew anything about the contents of that order?"

"A. I hadn't seen or heard anything of it."

"Q. You mean you had not up to that time."

"A. No sir."

On page 73 Chillcott the agent at Alexis said that when Lennon was requested to take the car he said he would quit his job rather than take the car. The question then propounded was:

"Q. What if any conversation did you have *then* have with him?"

"A. I stepped up to the engine and handed him a copy of this order."

"Q. With the notice attached to it signed by Mr. Canniff?"

"A. Yes sir. I gave him one and also the fireman."

"Q. Duplicates of the order that you have produced in Court?"

"A. Exactly like the one I have just handed you."

"Q. What time of day was this?"

"A. About 10:15 in the morning."

The order referred to signed by Mr. Canniff, General Superintendent, was as follows, page 36.

"Lake Shore & Michigan Southern Railway Co.

To all Employees:

"Having been advised that certain employes of this Company will decline to handle the interchange business of this Company and the Toledo, Ann Arbor & Northern

Michigan Railway Company, attention is called to the mandatory order of the United States Circuit Court which makes it imperative on this company, its managing officers and all its empioyes to comply with the order of said court.

W. H. CANNIFF, Genl. Supt.

Here followed a copy of the order of the court as found on page 7 of the printed record. This notice and order were placed upon a bulletin board in the engine house at Toledo between 4 and 5 o'clock in the afternoon of March 17th (p 22-23). The rules required that the engineers should examine the bulletin board before going out upon their trips (p. 36).

Lennon left Toledo about 4 o'clock in the morning of the 18th (p. 154). On page 162 this is found:

"Q. What time did you leave Air Line in the morning?"

"A. I left the house about half past three in the morning."

"Q. Had you looked at the bulletin board there?"

"A. Yes, sir."

"Q. What did you see on that board?"

"A. I looked at the Detroit bulletin board and didn't see anything to conflict with me and went on."

"Q. You saw a paper like that? (showing the copy of order as above.")

"A. No sir, I didn't see it."

"Q. Was it posted on that bulletin board which you looked at?"

"A. It might have been posted but I didn't see it."

It further appears (p. 36) that engineers employed by the Lake Shore Company are paid by the mile.

On page 18, George W. Stevens, Superintendent of motive power, testifies as follows:

"Q. Are you acquainted with and familiar with the rule and custom as to the performance of the particular service by the engineers in the employ of the Lake Shore road—say for instance a freight engineer entering upon the performance of his service?"

"A. Yes, sir."

"Q. I wish you would state to the Court what that is. Illustrate or state to the Court what the entry upon the service is, or what the service is and when it ends?"

"A. Well the rule provides that the compensation shall be on the basis of $3.70 for each 100 miles or less. The commencement of the—or rather the time is to commence as notified in the yard."

"Q. What do you mean by notified in the yard?"

"A. The time for which they are called to leave in the yard."

"Q. That is suppose they are called to leave at 4:20."

"A. Their time would commence at 4:20."

"Q. Now go on and explain to the court if you will, the order of performance of their duties when they begin and when they stop what is done."

"A. The end of the trip or run would be when they gave up their engines in the yard or track designated for that purpose."

On page 201 and 202 it appears that it was the custom of the company to discharge engineers at will and without giving notice. This right is clearly recognized in General Order of the Company No. 6. It is found on p. 202 and is as follows: "Men suspended or discharged shall be given a fair and impartial hearing within a reasonable time, and

if found blameless shall be paid such wages as they would have earned during the time of suspension or discharge, right being granted to select other engineers to assist in their defense."

The rule provides for a hearing as to whether the engineers are at fault, *after* discharge, and not before. This of course, could only have been adopted as a result of a custom to discharge employes at pleasure, without giving notice to the person discharged, and without presenting reasons for the company's action.

The evidence which relates to the transaction connected with the quitting of Lennon is that of H. B. Chillcott, page 70, J. F. Keegan, page 79, S. S. Hand, page 82, Willitts, page 84, and Lennon himself page 153, and Watson and Canniff.

ASSIGNMENTS OF ERROR.

I.

The Court erred in holding that there was a federal question presented by the bill of complaint, and that on that account it had jurisdiction of the case in which the order of injunction was issued.

II.

It erred in holding that appellant had such notice and knowledge of the order of injunction as to be punishable for a violation of its provisions.

III.

It erred in holding that the acts set out in the affidavit were in violation of the order of injunction.

IV.

It erred in holding that under the facts as stated in the bill in connection with those set forth in the affidavit, and those proven at the hearing, a court of equity had jurisdiction to issue the injunction which was issued in the case, and to punish appellant for contempt in disobeying its commands.

ARGUMENT.

I.

Did the bill of complaint present a federal question, or in the language of the Revised Statutes did the suit arise "under the constitution or laws of the United States."

Although the bill avers that all the railroad companies defendant were corporations created and organized under the laws of the State of Ohio and citizens of said State, it appears on page 113 that the Michigan Central R. R Co. is a corporation organized under the laws of the State of Michigan.

The complainant is a corporation organized under the laws of the State of Michigan.

By application of the rule that "A controversy between citizens of different States is one in which every party upon one side is a citizen of a different State from every party upon the other," (1 Foster's Federal Practice, Sec. 37) it will be seen that the Court could not entertain jurisdiction on the ground of diversity of citizenship.

The only ground therefore on which the jurisdiction can be maintained is that a federal question is involved or that the suit arises under the Constitution and laws of the United States.

The rule by which it is determined whether the suit is one which arises under the Constitution and laws of the United States is stated in Starin vs. New York 115 U. S. 257.

"The character of a case is determined by the questions involved. If from the questions involved it appears that some title, right, privilege or immunity on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction the case will be one arising under the Constitution or laws of the United States under the meaning of that term as used in the act of 1875. Otherwise not."

Then later on page 258 in considering the question in that case the Court says: "There is nothing in the Constitution or laws of the United States entering into the determination of the case which if construed one way will defeat defendants, or in another sustain them."

In Kansas Pacific vs. Atchison R. R. 112 U. S. 416, the Court said "The controversy in this case arises upon laws of the United States. As far back as Cohens vs. Virginia, 6 Wheat. 264, 379, decided more than 60 years ago, it was said that a case may be considered to arise under the Constitution or a law of the United States, whenever its correct decision depends upons the construction of either. The same thing is expressed by the statement that a case arises under the Constitution or laws of the United States, whenever the right set up by a party may be defeated by one construction or sustained by the opposite construction."

In Ames vs. Kansas, see 111 U. S. 462, it is said "The right set up by the company and by the directors as well,

will be defeated by one construction of these acts, and sustained by the opposite construction."

In R. R. Co. vs. Mississippi, 102 U. S. 141, it is stated that the following propositions are too firmly established to admit of discussion: "That a case in law or equity consists of the right of one party as well as of the other, and may properly be said to arise under the Constitution or a law of the United Sates, whenever its correct decision depends on the construction of either."

"That cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right, or privilege, or claim, or protection or defense of the party in whole or in part, by whom they are asserted."

In discussing the pleadings in the case the Court say p. 139.

"From this analysis of the pleadings and of the petition for removal, it will be observed that the contention of the State rests in part upon the ground that the construction and maintainance of the bridge in question is in violation of the condition on which Mississippi was admitted into the Union, and inconsistent with the engagement on the part of the United States as expressed in the act of March 1, 1817. On the other hand the railroad company in support of its right to construct and maintain the present bridge across Pearl River invokes the protection of the act of Congress passed March 2, 1868. While the case raises questions which may involve the construction of State Enactments, and also perhaps, general principles of law not necessarily connected with any Federal question, the suit otherwise presents a real and substantial dispute or controversy which depends altogether upon the construction or effect of an

act of Congress. *If it be insisted that the claim of the State as set out in its petition might possibly be determined by reference alone to State Enactments and without any construction of the act of 1817*, the provisions of which are invoked by the State in support of its application for *mandamus*, the important, and so far as the defense is concerned the fundamental question would still remain as to the construction of the act of Congress of March 2, 1868."

Here it is clearly intimated that if the claim of the plaintiff could be determined by reference to the state enactments alone, or to the principles of general law, without a construction of the act of Congress set out in the petition, the suit would not be one arising out of a law of the United States.

In Water Co. vs. Keyes, 96 U. S. 203 it is said, "A cause cannot be removed from a state court simply because in the progress of the litigation, it may become necessary to give a construction to the Constitution or laws of the United States. The decision of the case must depend upon that construction. The suit must in part at least arise out of a controversy between the parties in regard to the operation and effect of the Constitution or laws upon the facts involved. * *

"Before therefore a circuit court can be required to retain a cause under this jurisdiction it must in some form appear upon the record by a statement of facts in legal and logical form, such as is required in good pleading, that the suit is one which really and substantially involves a dispute or controversy as to a right which depends upon the construction or effect of the Constitution or some law or treaty of the United States."

The test by which to determine whether a federal ques-

tion is involved in a suit, is whether the right claimed is maintained by one construction of a law and defeated by another.

This is not the condition in this case for the following reasons: (1) It does not appear in the bill or the evidence that the complainant and the Lake Shore and Michigan Southern Railway Company are common carriers engaged "in the transportation of property and passengers under a common control, management, or arrangement for a continuous carriage or shipment from one state to another."

The bill avers that a large part of the business of complainant consists in the interchange of cars of freight between complainant and the defendant company, and that "substantially all of their business consists of the interchange of cars containing freight consigned from points in one state to points in another state."

The averment which is relied upon to bring the case within the provisions of the inter-state commerce act, so as to give rise to a federal question, is that complainant and defendants are common carriers engaged in the business of transporting cars consigned from points in one state to points in another

But this alone is not sufficient to subject the companies to the provisions of the Inter-State Commerce Act. Sec. 1 of that act provides "That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water, when both are used, *under a common control, management or arrangement for a continuous carriage or shipment* from one state * * * to any other state."

The averment in the bill is the same as it ought to have

been if the words italicized above were omitted from the section. There is no averment in the bill, nor does it appear in proof that the complainant and defendant were engaged in a transportation of property "under a common control, management or arrangement for a continuous carriage or shipment."

It is not every case where two railroads interchange freight at points of meeting to which the Inter-State Commerce Act is applicable. It is only to those where the interchange is the result of a transportation under "a common control, management or arrangement for a continuous carriage or shipment."

The record nowhere shows that such was the condition of the traffic between any of the defendants and the complainant, and so far as the Lake Shore & Michigan Southern R. R. Co. is concerned whose employe appellant was, there was no evidence to show any arrangement between it and complainant by which it was to carry the cars of the latter. The testimony (p. 72) that the car which appellant refused to haul was on a "Y" connecing the Lake Shore road and Ann Arbor road at Alexis, but it does not even appear that it had been placed on the "Y" by the complainant to be taken by the Lake Shore Company.

For anything that appears in the record this car may have been delivered at Alexis as the end of the carriage which the Ann Arbor had undertaken, without any arrangement ever having been made by the Lake Shore to carry it. In that event the Lake Shore could take it away when it pleased and the Ann Arbor road would have no interest in its transportotion after it had delivered it at Alexis.

(2) Alexis is a railway station in the State of Ohio; West

Toledo to which the car was to be hauled is also a station in the State of Ohio. It does not appear in the evidence that the car had been billed from any point in Michigan to West Toledo. It only appears that the car was to be carried by the Lake Shore from Alexis to West Toledo. The first section of the inter-state commerce act declares that the provisions of the act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storing or handling of property wholly within one state.

It would seem from this provision that whatever might be the rule as to the jurisdiction of the court over the defendants upon the first point above discussed, it cannot be claimed that appellant can be held to have violated the injunction by refusing to carry cars from one point to another in Ohio when they do not appear to have been brought from a point outside of that state to be hauled by the Lake Shore Company.

(3) Within the purview of the decisions already cited as to what constitutes a federal question, I submit that none arises here.

The right which the complainant claims does not depend upon a construction of a law of the United States. The right of complainant is to insist (so far as this appellant is concerned) that the Lake Shore and Michigan Southern Railway Company should receive from it cars of freight delivered in the ordinary course of business without delay, and to transport them to their destination over its road, and to deliver all cars to it billed over its road to be transported by complainant to their destination.

I will not now consider whether this right exist at common law or is recognized by the principles of general

law. It is sufficient for my purpose that the statutes of the State of Ohio recognize and enforce that right.

It therefore makes no difference what the Inter-State Commerce Act provides, the right of complainant so far as this car is concerned which appellant refused to move, was perfect under the law of the state of Ohio in which the refusal was made and where also the car was delivered to have been transported.

No construction which can be given to the Inter-State Commerce Act can defeat the right of complainant. This appears by the bill which avers: "And your orator further says that it is the duty of the defendant companies under the statutes of the state of Ohio, to receive from your orator the cars of freight delivered to them in the ordinary transaction of the business aforesaid, without any unnecessary delay and to transport the same to their destination over their respective roads, and in like manner to deliver to your orator all cars of freight billed over your orator's road to be by your orator transported to their destination."

It will be remembered that the appellant refused to transport a car from one point in Ohio to another, and that this act is in violation of the duty which it is averred in the the bill, the Ohio statutes had devolved upon the company whose employe he was.

Even if the Inter-State Commerce Act in any way extended to such an act, the right to restrain its performance by appellant is complete in complainant, under the Ohio statute, and therefore no possible construction given to the Inter-State Commerce Act can defeat the right on which complainant relies.

For these reasons we maintain that the court had no jurisdiction to issue the order of injunction for the breach

of which appellant was adjudged in contempt, because they show that no question is presented in the bill which arises out of the Constitution or laws of the United States.

II.

Did the court err in holding that appellant had such notice and knowledge of the order of injunction as to warrant the judgment finding him guilty of contempt?

It will not be disputed, that in a proceeding for contempt for violation of an injunction, it is necessary to show that the party charged with the contemptuous conduct must be known to have had knowledge or notice of the order of injunction in order that the court may have jurisdiction of the person.

Without such knowledge or notice to such person any adjudication finding a party gulity of contempt must be absolutely void.

The proceeding is one criminal in its nature and all provisions relating to the manner of proceeding are to be regarded as *strictissimi juri.*

In N. O. vs. Steamship Company, 20 Wall 392, it is said, "Contempt of court is a specific criminal offense. The imposition of a fine was a judgment in a criminal case."

The general rule is laid down in Rapaljo on Contempt, Sec. 86. "A motion for an attachment for the violation of an injunction will be denied, if any doubt exist as to whether the writ was served on the defendant."

Now in the present case it appears:

(1) That appellant was not a party defendant. No process was served upon him to bring him into court to

answer the bill of complaint. He was not given any notice that a mandatory injunction would be applied for, as required by Rule 55. It is true that the railroad companies defendants were so notified, but no such notice was given to their "agents, servants and employees" who were sought to be enjoined other than to the principal officers actually served with summons. It was not pretended that any such notice was given to appellant.

(2) Neither was appellant served with the order of injunction or a copy of it.

The rule is thus laid down in 3 Daniell's Chancery Practice p. 1908. "Before the Court will punish for a breach of an injunction, it must be clear that the party knew that the injunction had been issued; strictly speaking he ought to be served with the writ itself under the seal of the court in the manner already pointed out, but circumstances will justify a committal without the actual service of the writ as when the matter is pending and there is not time to procure the writ, as when the order is made in vacation when the offices are closed, in such cases as we have already seen the service of the writ will be dispensed with and service of a copy of the minutes of the order, or of a notice of their having been passed will be sufficient."

In an early case an exception was made to the rule where an agent in actual control and possession of the property in relation to which the order was issued and a solicitor of the defendant having actual notice of the order was held to be in the same category as the defendant himself. Wellesley vs. Mornington, 11 Beav. 181.

Of this exception to the rule *BROWN, J.* said in In Re Carey, 10 F. 626:

"The relaxation of the rule requiring personal service of an

injunction order as the basis of proceedings for contempt, which is a well-settled ordinary rule, exists only in cases where it is necessary in order that the ends of justice should not be defeated. This relaxation is not designed to dispense in the slightest degree with the service of the order, or due notice of it to those who are designed to be bound by it, when such service may be easily procured in the ordinary course of legal proceedings. The cases in which it originated were those in which the party enjoined was personally in court and knew of the injunction order being directed, but violated it before it could be entered or served. Skip vs. Harwood, 3 Atk., 564-567; Hearn vs. Tennant, 14 Ves., 136; Vassenden vs. Rose, 2 J. W. 264; Kempton vs. Eve, 2 Ves. and Bea., 349; McNeill vs. Garratt, 1 Cr. and Ph. 97, Hull vs. Thomas, 3 Edw. Ch. 236; People vs. Brower, 4 Paige, 405; Haring vs. Kaufmann, 2 Beav. 397; In Re Feeny, 4 N. B. R. 233. In all these cases it either plainly appeared or was admitted that the persons proceeded against had full knowledge of the injunction, and either disobeyed it before the order was entered or concealed themselves to evade service, or were out of the state when duly notified, and in several of the cases full notice of the injunction was given in writing although there was no technical service of a copy of the order itself.

The Revised Statutes do not contain any provision as to the manner in which service of the order shall be made in order to constitute a basis for proceedings in contempt.

Sec. 725 provides for cases in contempt and extends the power of courts among other things "to disobedience or resistance by any such officer, or by any party, juror, witness *or other person* to any lawful writ process order, rule, decree or command of the said court."

So far as persons other than parties to the case are concerned, it must mean persons having legal notice of the order for the violation of which the person is attached. Such notice would be the usual notice which would be sufficient to fix the liability of such persons independently of statute.

What kind of service would be sufficient has not been determined by the courts. In Sickles vs. Borden, 4 Blatchford 17-8, the Court said, "If the injunction had been properly served on Allen and had been directed to the servants, agents, workmen and employes of the defendants and had in terms restrained such servants, agents, workmen and employes, the very serious question would have been presented whether persons not parties to the bill could be restrained under such a general designation, by an injunction issued only to the parties to the suit. The act of Congress requires notice of the application for an injunction, and I am very strongly inclined to the opinion that in order to attach for the breach of an injunction the party to be proceeded against must be a party to the suit, and have had notice of the application for the injunction."

In In Re Cary *supra* the Court in discussing the attachment proceedings said: "But in denying the motion as to them, I prefer to place my decision upon the broader ground that those who procure an *ex parte* injunction, and make no efforts to serve it upon the persons who they claim shall be bound by it, though they are easily accessible, are not entitled to proceed for contempt upon any accidental, doubtful and disputed notice of the injunction alleged to have been conveyed indirectly only through other persons. *Parties designed to be bound by an injunction have a right to expect service in the ordinary way if they are accessible; and if they*

are not so served, and no excuse for it appears, as to them the injunction should be deemed waived or as never in force."

See also Coddington vs. Moore, 4 Sandford Ch. 360; Johnson vs. Van Kettle, 66 Ill. 65; Barthe vs. Larguie, 7 Southern Rep. 80.

We maintain that where a person not a party to a suit, to whom a mandatory injunction is not directed cannot be held in contempt for a violation of such an injunction unless the order itself or a copy of it is served upon him by an officer of the court.

In this case it is not pretended that any order was served upon appellant by the officers of the court, prior to the order to show cause why he should not be punished for the contempt. There is no evidence tending to show that appellant was ever served by an officer of the court with a copy of the order of injunction.

But if it will be held that it is sufficient to warrant proceedings in contempt against appellant, that he had knowledge of the order, although not properly served with it by the officers of the court, we submit that there is absolutely no evidence tending to show that appellant knew of the order before he did the act complained of.

Appellant on pages 12, 154 and 155 denies that he had seen the order, or knew anything about it or its contents before he did the acts complained of on March 18th.

The only attempt to notify Lennon before the occurence at Alexis was by the publication of the order with an appeal to the employes, and the posting of it on the bulletin board at Toledo.

The notice was posted March 17th about 4:30 in the afternoon (p. 67). It was the duty of the engineers before

they left to look at the Bulletin Board (p. 36). On March 18th at 3:30 in the morning Lennon left Toledo (p. 162). He looked at the bulletin board and did not see the notice on the Detroit Branch bulletin board the only one which he was interested to examine. There is no evidence that the notice was upon the bulletin board on that morning.

On March 18th at Alexis the station agent testifies that he handed Lennon a copy of the order (p. 73). He is not clear as to whether he served the notice before or after Lennon had quit the service.

The testimony of the conductor (p. 85) is that when he reached Alexis he got the order to take the car and so notified Lennon who said that he would quit the service. On page 73 it appears that the station agent went up to the engine, after the conductor had received his orders to take the car and communicated them to appellant. The conductor was in the engine with appellant when the agent came up with the notice. It seems clear as appellant claims that he had notified his conductor that he had quit before the agent came up, and, therefore, before the notice and order had been served upon him. It is true that the agent says that Lennon said that he had seen the order (p. 73); on p. 80 the brakeman testifies to the same effect as the agent. This Lennon denies. On page 183 he says that he had no opportunity of knowing what the order meant before March 18th and that at the hearing he did not fully understand it.

Upon all the facts as disclosed in the evidence, we submit that it does not appear that appellant had any such knowledge of the order as would warrant the Court in finding him guilty of contempt.

It follows that the Circuit Court had no jurisdiction of the person of the appellant, and the order committing him

for contempt can be inquired into on habeas corpus. In *Ex Parte* Terry, 128 U. S., 290 it was held: "An order committing for contempt is a nullity if the Court making it was without jurisdiction of the person of the offender and he can be discharged upon writ of habeas corpus."

It will also be noticed that the order of injunction was issued to restrain defendants from the refusal to perform a public duty, which it is claimed, the statutes of the United States and of Ohio devolved upon them. If some of their employes refused to perform the contracts they had made with the companies, so as to disable the latter from the performance of these duties, they would not on that account be excused. They would be bound to employ other men who would perform their contracts, and there is no remedy in in equity against the employes refusing to perform their contracts in a proceeding instituted against the companies themselves.

III.

Did the Court err in holding that the act complained of was violative of the injunction, and that a court of equity had jurisdiction to issue an injunction to restrain the performance of the act?

The act complained of in the affidavit is "refusal to obey the order and mandate of the court in the desertion of his locomotive and engine in the yard of said company, for the reason that Ann Arbor cars of freight were in the train of said company," and in another part of the paragraph, "refusal to haul said cars and perform his service for the reason that there were Ann Arbor cars in said train."

The proof to which I have referred shows that the real act complained of was the quitting of the employment of the Lake Shore Company by appellant. It shows that when he found he was expected to haul the car at Alexis he declared that he quit the service of the company and never after that was in its emply. He did not refuse as an employe of the company to haul the car, but quit the service of the company rather than haul it.

Judge Ricks in his opinion says (p. 215) "*As hereinbefore intimated the duties of an employe of a public corporation are such that he cannot always choose hts own time for quitting that service, and so long as he undertakes to perform and continues his employment the mandatory orders of the court to compel all lawful service can reach him and be enforced. The circumstances where this freedom to quit the service continues and when it terminates, it is not now necessary to determine, but there certainly are times and conditions when such right must be denied.*"

The Judge here asserts two principles which underly his decision: (1) That a court of equity has power by mandatory jnjunction to compel an employe to perform all lawful service while he continues in his employment and undertakes to perform that service, and (2) That there are times and conditions when the right to quit the service may be denied by a court of equity.

On pages 211-212 the Judge says "Will it be claimed the engineer and fireman could quit their employment when the train is part way on its route and abandon it at some point, where the lives of the passengers would be imperilled and the safety of property jeopardized? The simple statement of the proposition carries its own condemnation with it."

The Judge substantially holds upon the facts that appellant had not, under the circumstances, the right to quit the service as he claims to have done, and also that he did not in fact quit the service. On page 217 he says: "Upon the facts of the case made against Engineer James Lennon, I find that he did not quit the service of the Company in fact, and did not intend to do so, and that his pretense to do so was a trick to evade the order of the Court."

One of two propositions or both must be maintained to support the injunction in this case aginst Lennon. (1) Either that he still continued in the service of the Lake Shore Company, and that a court of equity by a mandatory injunction could compel him to perform the service he had undertaken, or (2) that a court of equity could by such injunction restrain him from quitting the service, and therefor compel him to remain in an employment he desired to abandon.

In both cases the substance of the claim is that a Court of equity can compel a man to remain in a service until certain conditions it has imposed have happened, and to compel, while he so remains, the performance of the service he had originally undertaken.

The principle therefore, to be deduced from this decision is, that when the servant of a railroad company who has undertaken to perform personal service for his master, and either remaining in the employment, refuses to do what he has undertaken, or quits the service rather than do it, a Court of equity by a mandatory injunction may compel him to remain in the service under certain conditions, and in both cases compel him by such injunction to perform the personal service which he has undertaken.

We maintain that it is not within the province of a Court of equity to interfere with a personal contract of service so as to compel its performance by the servant, that it cannot enforce such a contract by a mandatory injunction in the nature of a specific performance, and that such contract and attempted specific performance are beyond the jurisdiction and control of a Court of Equity.

We also maintain the further proposition that the Circuit Court had no jurisdiction or authority to entertain a bill in equity to restrain the appellant from quitting the service of the Lake Shore Company, and to compel him to remain in such employment and to perform the duties of his service, and that an injunction issued upon such bill, as well as the order committing the defendant for contempt in disregarding the injunction, is absolutely void, and appellant is entitled to be discharged on habeas corpus.

In support of the law laid down in the last proposition I refer to In Re Sawyer 124, U. S. 200.

In that case a bill of equity was filed in the U. S. Circuit Court of Nebraska, setting out that the complainant was a police judge of the city of Lincoln, and that the defendants who were the mayor and members of the Common Council of that city, were threatening without authority and evidence, and in violation of complainants right and the Constitution of the United States, to declare the office of police judge vacant and appoint some other person to fill the same.

The bill prayed for an injunction restraining defendants from declaring said office vacant, and from proceeding further in consideration of the charges which had been preferred against complainant.

There was a prayer for a preliminary injunction which was granted, and the restraining order was served upon the Mayor and Councilmen.

But the Mayor and Councilmen refusing to obey the order proceeded to hear and dispose of the charges, declared the office vacant, and appointed another person to fill the position.

Upon an attachment charging the defendants with violation of the order, the Mayor and Councilmen were brought before the Circuit Court, which upon a hearing found them guilty of violating the injunction, and adjudged that they be fined, and in default of payment that they stand committed until the fines should be paid. They did not pay the fines and were therefore taken and held in custody by the marshal.

The petition for a writ of *habeas corpus* was filed in the Supreme Court of the United States.

The Court in its opinion say: "The office and jurisdiction of a court of equity, unless enlarged by express statute are limited to the protection of the rights of property. It has no jurisdiction over the prosecution or the pardon of crimes or misdemeanors, or over the appointment or removal of public officers. To assume such a jurisdiction or to sustain a bill in equity, to restrain or relieve against proceedings for the punishment or removal of public officers, is to invade the domain of the Courts of common law or of the executive or administrative departments of the government."

Page 219. "But if the proceeding is of a criminal nature, it is quite clear, for the reasons and upon the authorities set forth in the earlier part of this opinion, that the

case stated in the bill *is wholly without the jurisdiction of any court of equity.*" * *

"But if these proceedings are to be considered neither as criminal or judicial, but rather in the nature of an official inquiry by a municipal board entrusted by law with the administration and regulation of the affairs of the city, still their only object being the removal of a public officer from his office, they are equally *beyond the jurisdiction and control of a court of equity.*"

* * Page 220. "*In any aspect of the case, therefore, the Circuit Court of the United States was without jurisdiction or authority to entertain a bill in equity for an injunction.*"

* * Page 221. "But the ground of our conclusion is that whether the proceedings of the city council of Lincoln, for the removal of the police judge, upon charges of misappropriating moneys belonging to the city, are to be regarded in their nature criminal or civil, judicial or merely administrative, *they relate to a subject which the Circuit Court of the United States sitting in equity, has no jurisdiction or power over*, and can neither try or determine for itself, nor restrain by injunction the tribunals and officers of the state and city from trying and determining."

Page 221. "*The Circuit Court being without jurisdiction to entertain the bill in equity for an injunction*, all its proceedings in the exercise of the jurisdiction which it assumed are null and void."

In this case the Supreme Court holds that under the priniple and practice of a Court of equity, such Court has no jurisdiction of a bill to stay criminal proceedings, or of a bill to restrain the removal of a public officer, or of a bill to

to restrain certain public officers from removing another public officer under the circumstances set out in the bill itself.

This finishes the test as to whether the Court has the power to grant an injunction. This test is variously expressed in the opinion, as follows: whether the subject to which the bill relates is "*beyond the jurisdiction and control of a Court of equity;*" or whether such a Court is "*without jurisdiction or authority to entertain a bill in equity for the injunction;*" or whether "*the case stated in the bill is wholly without the jurisdiction of any Court of equity.*"

By an examination of the authorities establishing the principles and practice by which a Court of equity is governed, the Supreme Court held that the jurisdiction of a Circuit Court sitting as a Court of equity, did not extend to a bill to stay criminal proceedings, or to restrain the removal of a public officer.

By an appeal, here, to the authorities fixing the principles and practice governing courts of equity in dealing with personal contracts for service, it will be found that its jurisdiction does not extend to bills to compel servants to perform their contracts, nor to bills which would restrain them from quitting the service, thus compelling them to remain in their employment against their will.

The general rule is thus laid down in 22 Am. and Eng. Enc. p. 1002, "The specific performance of a contract of personal service will not be enforced, for there is no practical means of executing the decree. Contracts to be performed in the remote future, or the execution of which involves the performance of a continued and protracted service of acts, as the doing of some act or thing which demands the exer-

cise of the individual skill, discretion, taste or talent of the promisee, are of necessity incapable of judicial supervision or control. For the breach of such agreements the party injured must be left to his remedy in a court of law."

In Marble Company vs. Ripley 10 Wallace 358, "Another serious objection to a decree for specific performance is found in the peculiar character of the contract itself, and in the duties it requires of the owners of the quarries. These duties are continuous. They involve skill, personal labor and cultivated judgment. It is in effect a personal contract to deliver marble of certain kinds, and in blocks of a kind that the Court is incapable of determining, whether they accord with the contract or not. The agreement being for a perpetual supply of marble, no decree of the Court will make an end to the controversy."

In the syllabus it is said, "*Specific performance will not be decreed against one party and in favor of another, where the duties to be fulfilled by the grantee are continuous, and involve the exercise of skill, personal labor, and cultivated judgment.*"

In the opinion, The Port Clinton Railroad Company vs. The Cleveland and Toledo Railroad Company, 13 O. S. 544 is referred to with approval.

There the court say p. 549-50: "For although the court is said to have a discretion in granting or refusing a specific performance, it is not an arbitrary discretion, but a discretion to be regulated by precedent and established practice. It would however be going too far to say that in all cases where the ordinary legal remedy would not afford adequate relief, there is necessarily a right to specific performance. *In the case of a contract for personal service, it may be, that on a refusal to perform the contract, an action for damages*

would not afford adequate relief, and yet it is clear that a court of equity will not attempt to enforce specifically such a contract. Hamblin vs. Dinneford, 2 Edwards, 529; De Rinafinoli vs. Rossetti, 4 Paige, 264; Ex parte Clark, 1 Blackf. 122; Stocker vs. Brockelbank, 5 Eng. L. E. 67; 3 Mac. & G. 250."

In Marshall vs. Texas and Pacific Railway Company, 136 U. S. 393, the syllabus is, "The City of Marshall agreed to give to the Texas and Pacific Railway $300,000 in county bonds, and 66 acres of land within the city limits, for shops and depots; and the company in consideration of the donation, agreed to permanently establish its eastern terminus and Texas offices at the city of Marshall, and to establish and construct at said city the main machine shops and car works of said railway company. The city performed its agreements and the company, on its part, made Marshall its eastern terminus, and built depots and shops and established its principal offices there. After the expiration of a few years Marshall ceased to be the eastern terminus of the road and some of the shops were removed. The city filed this bill in equity to enforce the agreement both as to terminus and the shops. Held * * That if the contract were interpreted as one to forever maintain the eastern terminus, and the shops and Texas offices at Marshall, without regard to the convenience of the public, it would become a contract that could not be enforced in equity."

The Court says, p. 406. "If the Court had rendered a decree restoring all the offices and machinery and appurtenances of the road which had been removed from Marshall to other places, it must necessarily superintend the execution of the decree. It must be making constant inquiry as to whether one of the subjects of the contract

which have been removed have been restored. It must consider whether this has been done perfectly and in good faith, or only in an evasive manner. It must be liable to perpetual calls in the future for like enforcement of the contract, and it assumes, in this way an endless duty, inappropriate to the functions of the court, which is as ill-calculated to do this as it is to supervise and enforce a contract for building a house, or building a railroad, both of which in this country *have been declared to be outside of its proper functions, and not within its power of specific performance.*"

The following cases held that equity will not enforce specific performance if the execution of the contract would require the supervision of the Court.

Cooper vs. Pena. 21 Cal. 403
Danforth vs. Philadelphia, etc. R. R. Co.
30 N. J. Eq. 12.

Buck vs. Smith, 29 Mich. 166.
Blanchard vs. Detroit, etc. R. R. Co.
31 Mich. 43.

Neither can continuous service be specifically compelled.

Case of Mary Clark, 1 Blackf. p. 122.
Ikerd vs. Beavers, 106 Ind. 483.
Lindsay vs. Glass, 119 Ind. 302.

Nor contracts calling for the exercise of peculiar skill, judgment, care and attention, talents or peculiar confidence or esteem, with cases there cited. 22 Am. Eng. Enc. 1004.

In Fry on Specific Performance, p. 62, it is said "When the contract is from its nature such that the Court cannot enforce its performance, *it is necessarily no subject of its jurisdiction in that respect.*"

See leading case of Lumley vs. Wagner, 1 De G., M. & G. 604.

In note on same page. Court will not direct performance "of contracts to do purely personal acts. It may be laid down that equity never enforces these contracts, unless they have some reference to property of some kind or a partnership of some nature."

In 3 Pomeroy's Equity Jurisprudence, 1343.

"It is however a familiar doctrine, that a court of equity will not exercise its jurisdiction to grant the remedy of an *affirmative* specific performance, however inadequate may be the remedy in damages, whenever the contract is of such a nature that the decree for its specific performance can not be enforced, and its obedience compelled by the ordinary processes of the court. A specific performance in such cases is said to be impossible, and contracts for personal acts have been regarded as the most familiar illustrations of of the doctrine."

In cases where there are negative promises in an agreement, a court of equity may restrain the defendant from doing that which he has agreed not to do, but the courts granting the relief disclaim any purpose or power to compel the defendant to do what he agreed to do. This doctrine was applied in Lumley vs. Wagner, *supra*, where an opera singer had agreed to sing for a certain defined period in the plaintiff's opera house, and also that she would not sing anywhere else. She was restrained from singing where she had agreed not to sing, but the court declined to compel her to sing where she had agreed to.

It would be idle to multiply authorities upon this point. The rule is universal that equity will not interpose by a mandatory injunction to compel the performance of a per-

sonal contract involving skill, judgment and continuousness of service. The reasons are (1) the processes of the court cannot effectuate performance; (2) it is foreign to the nature of the judicial office to supervise and manage a work in which the elements above specified are required; (3) the imprisonment for a violation of a mandatory order, which is the only method of enforcing it, disables the person necessarily, in most cases, from doing the thing commanded; (4) in order that the work shall be done according to the contract, it must be done under the eye and control of the master, and when the court turns over an unwilling servant to be directed and governed by the master whom he has refused to serve, "it would produce a state of servitude as degrading and demoralizing in its consequences as a state of absolute slavery." Such a result would be against public policy, and will never be brought about by judicial action in a free government.

Upon an examination of these authorities it will appear that a personal contract for service is a subject "beyond the jurisdiction and control of a court of equity"; that such a court is "without jurisdiction or authority to entertain a bill for an injunction "to compel the performance of such a contract" and that "the case stated in the bill" and made by the proof "is wholly without the jurisdiction of a court of equity."

The principles and practice of equity jurisprudence place such a subject as much beyond its jurisdiction, as criminal proceedings or the removal of a public officer.

If this be true, then the Circuit Court being without jurisdiction to entertain a bill in equity for a mandatory injunction to compel the appellant to perform his contract with the Lake Shore Railway Company, all its proceedings

in the exercise of the jurisdiction which it assumed are null and void.

The unprecedented nature of the mandatory order issued in this case was conceded by the Judge in his opinion. He says on page 210, "It is said the orders issued in this case are without precedent. Every just order or rule known to equity courts was born of some emergency to meet some new condition, and therefore in its time was without precedent. If based upon sound principles, and beneficent results follow their enforcement, affording necessary relief to the one party without imposing illegal burdens upon the other, new remedies and unprecedented orders are not unwelcome aids to the chancellor to meet the constantly varying demands for equitable relief."

But it must not be forgotten that the relation of master and servant is not a new one. Nor is the condition of a servant unwilling to work for his master, and quitting the service although he may have been engaged for a definite period, a new one. Such relations and conditions are as old as the common law, and yet it was never thought that an interference with them by a court of equity to compel performance of personal contract was "based upon sound principles." On the contrary, for centuries every effort to induce a court of equity to interfere has failed, and the Court have based their refusal to interfere, upon the ground that such interference could not be justified "on sound principles."

Nor is the situation changed because in this case the contract was made between appellant and a railroad company, which Judge Ricks calls a "public corporation." But public corporations engaged in performing the duties of common carriers have been in existence for centuries, and no precedent can be found of an attempt to enforce the per-

formance of the contracts of their employes by injunction. Such employes in this respect have always been regarded as standing in the same relation to the companies as the ordinary servant to the ordinary master.

And such indeed must be the rule unless a contract for service made with a railroad company is different in its nature from an ordinary contract.

But this cannot be successfully maintained.

The obligations of such contracts are the same as in other cases. The same processes of the law must be resorted to for their enforcement. When the terms of the contract are violated, the same remedies are given for the making good the losses of the party injured. There is the same difficulty in compelling performance in the one case as in the other. The reasons which have been given by courts of equity for declining to issue mandatory injunctions in ordinary contracts, apply with equal force to contracts between locomotive engineers and railroad companies. The processes of a court of equity cannot compel performance.

If an engineer refuses to take out his engine or run it to its place of destination after it has been taken out, no order of the Court can force him to do what he has refused to do.

Concede that he is guilty of comtempt in his refusal, the Court may imprison him for his contemptuous conduct, but while he remains in jail, his engine stands still. The only process by which the Court enforces the order, disables the engineer from executing it.

If the engineer in his refusal to run his engine endangers life and property, his act becomes a crime, and for it he must answer to the courts administering the criminal law. The greater importance of the obligation he has

assumed by virtue of his contract with a public corporation, and the greater danger following his disregard of such obligation will not justify a departure by the court of equity from the established principles, practice and precedent of that jurisprudence.

Besides no such question as to public danger can arise here. The evidence shows that appellant after quitting the service took his engine and train to a place of safety on a side track, where it remained for several hours, without injury to the person or property of any one.

FRANK H. HURD,
Of Counsel for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

NO. 15302

Exparte: In the matter of JAMES LENNON,
Appellant.

Appeal from the Circuit Court of the Northern District of Ohio Western Division.

BRIEF FOR APPELLANT.

G. M. BARBER,
FRANK H. HURD,
WALTER H. SMITH,
Attorneys for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

EX-PARTE JAMES LENNON, No. 15302.

Appeal from the Circuit Court of the United States for the Northern District of Ohio, Western Division.

STATEMENT.

The petitioner, James Lennon, was a locomotive engineer on the Lake Shore and Michigan Southern Railway, and was arrested on the 18th day of March, 1893, charged with contempt for disobedience of a preliminary restraining order issued by said Circuit Court restraining the Lake Shore and Michigan Southern Railroad Company and the other defendant companies, their officers, agents, servants, and employees, from refusing to offer to the Toledo, Ann Arbor and North Michigan Railway Company all reasonable and proper and equal facilities for the interchange of traffic with the said Toledo, Ann Arbor and North Michigan Railway Company, and from refusing to receive from said Toledo, Ann Arbor and North Michigan Railway Company, for transportation over their respective lines of railroad, any and all cars of freight which may be tendered to them by said Toledo, Ann Arbor and North Michigan Railway Company, and from refusing to deliver to said Toledo,

Ann Arbor and North Michigan Railway Company all cars of freight, which may be billed over its line of railway from said defendant companies in like manner as heretofore.

The Circuit Court adjudged him guilty of contempt and fined him fifty dollars, and ordered that he be imprisoned until the fine was paid. The fine has not been paid, and he is in custody.

He applied to the Circuit Court for a writ of *heabas corpus*. His application was rejected and he appealed to this Court.

The origin of the troubles which were the occasion of the issuing of that order was an action begun by the Toledo, Ann Arbor and North Michigan Railway Company against the Pennsylvania Company and five other railroad companies, including The Lake Shore and Michigan Southern Railway Company and Albert G. Blair, general manager of the Wheeling and Lake Erie Railway Company, and Jacob S. S. Morris, the superintendent of the Pennsylvania Company.

In that action the complainant avers that it is a corporation existing under the laws of Michigan, and is a citizen of that State; that all the defendant companies are corporations, duly incorporated under the laws of and are citizens of the State of Ohio, except the Pennsylvania Company, which is incorporated under the laws of, and is a citizen of the State of Pennsylvania, and that the complainant company is a common carrier of freight and passengers under the statutes of the United States, Ohio, and Michigan; that the defendant companies, their officials, agents, and employees, have, ever since the 11th day of March, 1893, given out and threatened that they will refuse to receive from the complainant company cars offered or to be offered by complainant company, and that they will not deliver to the complainant cars billed over its road for transportation by complainant company to their destination, for the reason that complainant has employed as locomotive engineers in its service men who are not members of the Brotherhood of Locomotive Engineers, while the said defendant companies continue to afford to other railroad companies full and free facilities for interchange of traffic, but refuse to transact

such business with complainant, thereby discriminating illegally against complainant company.

It then sets forth that no just reason exists for such discrimination, and that if it is to be continued an important part of its business will be at a stand-still and the transaction of said interstate commerce will be paralyzed, to its irreparable loss and injury.

It further sets forth that substantially all the business it transacts with defendant companies consists of interchange of cars containing freight consigned from points in one State to points in another State, and comes under the provisions of the Interstate Commerce Act, and that all its business of interchange of cars with said defendant companies is transacted within the jurisdiction of this court (Northern District of Ohio, Western Division).

The complainant then prays for an injunction perpetually enjoining and restraining the defendant companies, their officers, agents, servants, and employees, from refusing to offer to complainant all reasonable, proper, and equal facilities to the interchange of traffic with complainant, and from refusing to receive from complainant for transportation on their respective lines of railroad any and all cars of freight which may be tendered to them by complainant, and from refusing to deliver to complainant all cars of freight which may be billed over complainant's line of railroad from defendant companies in like manner as heretofore.

A provisional or preliminary restraining order was issued restraining the said defendant companies as prayed for.

This restraining order was served on the defendant railroad companies, but was not served on the defendent James Lennon or on any of the locomotive engineers in their employ.

The applicant for the writ of *habeas corpus* in this case was, at that time, a locomotive engineer in the employ of the Lake Shore and Michigan Southern Railway Company, one of the defendant railroad companies in that preceeding, and there was no agreement between him and said company as to the time said railroad company should retain him in its employ, nor as to the

time he should continue in its service, said company having the right at its pleasure to discharge him from its service, and he having the corresponding right to quit its service at his pleasure.

After the said restraining order had been issued Lennon, who was a resident of Toledo and easily accessible to the officers of the court, was never served with a copy of the order, and was in no way directly notified of its contents.

The order had been placed on the bulletin-board in the round-house at Air Line Junction in Toledo on the evening of March 17th. Early on the morning of March 18th Lennon took out his train to Monroe. He went to the bulletin-board to learn whether there were any orders affecting him or his train, and, finding nothing, he started on his trip. He did not see or read the order.

On the same morning he started on his return trip from Monroe to Toledo. He did not see any order in Monroe, nor was he informed of any before he started. On his way back to Toledo, when he reached Alexis he was signalled to stop for orders. When he stopped the conductor went to the station agent and found that there was a car to be taken from the Ann Arbor road to be delivered at Toledo. Thereupon Lennon said he would quit the service of the company rather than take the car.

After he had said he would quit, the station agent gave him a copy of the order, which Lennon says he then saw for the first time. It is true that the station agent and conductor both say that Lennon said he had seen the order before and knew its contents. Lennon, however, says on the witness stand that he had never seen the order before he had quit the service, and that he did not even then, at the time of the hearing, fully understand its contents.

After Lennon had quit the service, he took his train and placed it on a side track where it was in a situation in which it could not be injured, nor inflict injury upon persons or property.

The train there remained until about four o'clock in the afternoon, when at the request of the officers of the company, and acting upon information he had received from some of his

brother engineers, he took the car from the Ann Arbor track with his train, and brought it to Toledo, where he safely delivered it to the custody of the company.

On these facts it is claimed, first, that Lennon had no such notice of the order of the court as to warrant it in adjudging him guilty of contempt, and, secondly, that the act of quitting the service of the company under the circumstances proved was not a violation of the order of injunction, which could only, in any view, operate upon him while he remained in the service of the company.

It also appears from the proof that The Michigan Central Railroad Company is a corporation of Michigan, the same State as that of which the complainant in the original bill was a citizen. The court, therefore, had no jurisdiction on the ground of diverseness of citizenship, and could only entertain the case on the ground that the bill presented a federal question.

The bill claims that the act which defendants threatened will be in violation of the Interstate Commerce Act, and that the duties which the suit is brought to compel the defendants to perform are imposed by the provisions of that act.

It is insisted, however, that the duties, the performance of which the bill seeks to compel, were devolved upon defendants by the common law; that complainant is entitled to his relief without regard to the Interstate Commerce Act, and that in the suit no question under that act arises or is presented.

It is also claimed that a Court of Equity has no power to issue an injunction to enforce the performance of a personal contract for services, and that, if the effect of the order issued in the case was to compel the petitioner to remain in the service of the railway company, the order was void and that petitioner was not guilty of contempt in violating it, and therefore is illegally restrained of his liberty and entitled to the writ of *habeas corpus*.

It is apparent from the foregoing, that the questions involved in this case are of the highest importance. They involve vast interests and it is very desirable that they be judicially determined by the highest tribunal in the land, and at an early date.

G. M. BARBER,
FRANK H. HURD,
WALTER H. SMITH,
Attorneys for Petitioner.

MAY 1, 1893.

Supreme Court of the United States.

EX-PARTE: IN THE MATTER OF JAMES LENNON, APPELLANT.

Appeal from the Circuit Court of the United States for the Northern District of Ohio, Western Division.

CERTIFICATE.

The questions certified to the Supreme Court for its decision are the questions of jurisdiction presented by the petition herein filed, to wit:

1st. Is the said suit in which the order was made one arising under the Constitution or laws of the United States?

2nd. Did the Court have jurisdiction of the person of the petitioner by reason of his having had sufficient notice of the proceedings and orders set out in the petition?

3rd. Was it beyond the jurisdiction of a Court of Equity to issue the orders made in the said case?

FIRST QUESTION.

Is the suit in which the order was made one arising under the Constitution or laws of the United States?

The claim of the petitioner is, that it appears from the testimony given on the hearing of the application for attachment for contempt, so far as your petitioner was concerned or involved in that hearing, that no question was involved arising under the Constitution or laws of the United States.

On that hearing eight persons, to wit: N. O. James, Lee Thompson, —. Kessler, firemen, and James Lennon, James Case, L. Clark, William Rutger and John Conley, locomotive engineers, employees of said The Lake Shore and Michigan Southern Railway Company, were put on trial charged with contempt for disobedience of a mandatory order of injunction, of which the following is a copy, found on page 7 of the record of the proceedings the material part of which so far as this proceeding is involved, is as follows:

The Toledo, Ann Arbor and North Michigan Railway Company Complainant,

vs.

The Pennsylvania Company et al., Defendants.

} Order.

On the filing of the bill of complaint and the affidavit herein and it appearing to the Court that serious, immediate and irremediable damage will ensue unless an interlocutory injunction be allowed as prayed for in the bill, it is, on application of said complainant, ordered that said defendants, Albert G. Blair, Jacob S. Morris, The Pennsylvania Company, The Wheeling and Lake Erie Railway Company, The Lake Shore and Michigan Southern Railway Company, The Michigan Central Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Columbus, Hocking Valley and Toledo Railway Company, The Toledo and Ohio Central Railway Company, The Cincinnati, Jackson and Mackinaw Railway Company, and each of them and their officers, agents, servants and employees be, and they are hereby enjoined and restrained from refusing to offer and extend to said The Toledo, Ann Arbor and North Michigan Railway Company the said equal facilities for interchange of traffic on interstate business between said railway companies as are enjoyed by other railway companies, and from refusing to receive from said The Toledo, Ann Arbor and North Michigan Railway Company cars billed from points in one State to points in other States which may be offered to said defendant compapanies by the complainant, and from refusing to deliver in like

manner to said complainant cars which may be billed over complainant's line from points in one State to points in other States.

Ordered that a writ of injunction be issued out of and under the seal of this Court, as prayed for in the bill of complaint to remain in full force until the further order of Court herein.

Done at chambers, in the city of Cleveland, in said district on this 11th day of March, A. D. 1893.

AUGUSTUS J. RICKS,
U. S. Dist. Judge, N. D. O."

In the complaint of the said The Toledo, Ann Arbor and North Michigan Railway Company, wherein an injunction was prayed for and wherein the mandatory order aforesaid was made, neither James Lennon nor any one of the firemen or engineers was named, nor was any process, issued by said court, at any time served upon your petitioner, James Lennon, or any one of the seven others who were tried with him in said application for attachment against them.

In the said application for an order of attachment to show cause why they should not be punished for contempt for the disobedience of said order, the only acts or refusals on the part of said James Lennon or any of the firemen or engineers who were tried at the said hearing as a ground for said order are contained in the following statement, which is copied from said application.

"That in the usual course of business with the said complainant in the above cause there were, upon the 17th day of March, 1893, between the hours of 4 and 11 P. M., upon the tracks and in the yards of said The Lake Shore and Michigan Southern Railway Company, to be delivered to The Toledo, Ann Arbor and North Michigan Railway Company, a number of cars laden with freight, shipped from within the State of Ohio and consigned to places without said state, to be by said The Toledo, Ann Arbor and North Michigan Railway Company, hauled over its lines within and beyond the State of Ohio and to be delivered to other connecting carriers therein.

That upon receipt of said cars and freight by the said The Lake Shore and Michigan Southern Railway Company upon the 17th day of March, 1893, certain of said The Lake Shore & Michigan Southern Railway Company's employees, to wit, N. O. James, Lee Thompson, and —— Kessler, firemen, and James Lennon, L. Clark, James Case, William Rutger and John Conley, locomotive engineers in charge of its locomotives and engines, having theretofore had full notice of the order theretofore made and of the law applicable to the case, and whilst in the service of said company, refused to obey the order and mandate of this court in said cause and deserted their locomotives and engines in the yard of said company for the reason that Ann Arbor cars of freight were in the trains of said company, said employees, in fact, refusing to haul said cars and perform their service for the reason that there were Ann Arbor cars in said train."

On said hearing it was suggested by the court and agreed upon by counsel for the complainants and the defendants, that the cases of all said defendants should be heard together, but in the consideration thereof each case should stand upon its own particular facts and merits. See page 15 printed record.

As to each of said defendants except said James Lennon, it is sufficient to say that they were all found not guilty and discharged by said court on the ground that they quit the service of said company before refusing to handle cars and freight belonging to The Ann Arbor and North Michigan Railway Company. See page 13 of record.

We now refer to the testimony heard on said application as to your petitioner James Lennon for the purpose of showing that upon the facts as appears from said testimony no federal question was presented for the decision of said court.

Only six of the witnesses who testified on that hearing gave any evidence in the case of James Lennon petitioner for habeas corpus, to wit: H. B. Chillcott, page 70 to 79; J. F. Keegan, page 79 to 82; S. S. Hand, page 82 to 84; —— Willitts page 84 to 87; J. W. Watson, page 93 to 113, and James Lennon page 153 to 168 of the printed record.

The testimony of the witnesses above named (except Chillcott) and Canniff, page 87 to page 93 printed record, has reference only to the question whether or not Lennon had knowledge of the mandatory order referred to for disobedience of which the proceedings to punish him for contempt were taken and on which that whole proceeding was based, and has no bearing on the question whether or not there was a federal question involved in the issue.

It will be observed that the only complaint of disobedience of the order of the court on which said defendants were cited to appear and show cause why they should not be attached was that "on the 17th day of March 1893, between the hours of 4 and 11 P. M. there were upon the tracks and in the yards of the said Lake Shore and Michigan Southern Railway Company to be delivered to the Toledo, Ann Arbor and North Michigan Railway Company a number of cars laden with freight shipped from within the State of Ohio and consigned to places without said State to be by said Toledo, Ann Arbor and North Michigan Railway Company hauled over its lines within and beyond the State of Ohio and to be delivered to other connecting carriers therein, which cars the said Lennon refused to haul, refusing for the reason that there were Ann Arbor cars in said train."

The testimony and all the testimony offered on said hearing as regards the defendant, Lennon, shows conclusively and without contradiction that at 6 o'clock of March the 17th, the defendant Lennon, left Detroit in the State of Michigan in charge of a local train going South toward Toledo and arrived at Toledo at about 5 o'clock on the evening of that day, and there is no testimony tending to show that on the 17th he refused to carry out any orders given to him.

That on the morning of the 18th, having charge of a train under the orders of the said Lake Shore and Michigan Southern Railway Company, he left Air Line Junction, a station of said road where trains of freight cars are made up, at about 4 o'clock in the morning and went north as far as Monroe, a station on said Lake Shore and Michigan Southern Railway in the State of Michigan, that at Monroe he took charge as engineer of a train

fo cars under the orders of said Lake Shore and Michigan Southern Railway Company for the purpose of hauling the same from Monroe to Toledo.

On said trip he arrived at Alexis which is a station on the said Lake Shore and Michigan Southern Railway south of the line between the States of Michigan and Ohio and within the State of Ohio, at which station there is a side track called a "Y" which connects the tracks of the Toledo, Ann Arbor and North Michigan and Lake Shore and Michigan Southern Railway Companies on which cars of freight that were being transported by said Toledo, Ann Arbor and Northern Michigan Railway Company to be delivered to the Lake Shore and Michigan Southern Railway Company and cars that were being transported by the Lake Shore and Michigan Southern Railway Company to be delivered to the Toledo, Ann Arbor and North Michigan Railway Company were accustomed to be placed by the Company hauling the same and taken by the Company to which they were to be delivered.

On arrival at that station, notice was given to him that there was a car on that " Y " that he was ordered to take on his train and haul further south. This order has no reference whatsoever to the refusals stated in the application for attachment.

This car was a car belonging to the Lake Shore and Michigan Southern Railway Company, the company in whose employ he was. It belonged to a class of cars called the "Red Line" and was numbered 9003 and was an empty car. See testimony of Herman B. Chillcott pages 71, 72 and 73 and of James Lennon page 158 printed record.

Thereupon he notified the agent of said Lake Shore and Michigan Southern Railway Company who transmitted the order to him that he quit the employment of said Company, see page 161 Lennon's testimony, page 80 Keegan's testimony and page 85 Willett's testimony, but offered to place the train of cars of which he was in charge at any place that the Company might direct, see page 156 Lennon's testimony.

The testimony further shows that a passenger train coming from the south on said railway was due at about that time, see

page 156 Lennon's testimony, that under the orders of said Lake Shore and Michigan Southern Railway Company, he placed the train of which he was in charge on the said Ann Arbor Y, see page 80 Keegan's testimony, the same Y on which said Red Line empty car number 9003 was standing and remained there until about 3 o'clock P. M. of said day, see page 74 Chillcott's testimony, when he took his said train and said car to Toledo, see page 81 Kegan's testimony, and placed said train where he was directed to place it by the officers of said Company, took his engine to the proper place where it was to be left, left it there, went to his home and did not thereafter return to the employ of the Company, see page 158 of Lennon's testimony.

To understand the transactions between the petitioner and the Lake Shore and Michigan Southern Railway Company, it is necessary to know the location of the points referred to in the testimony:

Air Line Junction is in Lucas County Ohio at West Toledo the place where the round house and yard at which freight trains of the Lake Shore and Michigan Southern Railway are made up for Detroit and places between it and Detroit.

Testimony of James O. Bradeen page 20-21.

Alexis is a place on the Lake Shore and Michigan Southern Railway in Ohio, north of Air Line Junction in the State of Ohio just south of the Michigan line where the Toledo, Ann Arbor and Northern Michigan Railway crosses the Lake Shore and Michigan Southern Railway, and where there is a "Y" which connects the two roads on which the interchange of cars and traffic between the two roads is carried on.

Testimony of Bradeen page 25.

Monroe is a station on the Lake Shore and Michigan Southern Railway in the State of Michigan north of Alexis and between it and Detroit.

Testimony of John F. Keegan, brakeman on Lennon's train page 79.

The following is the testimony of H. B. Chillcott, in full, after the introductory part of the examination. It contains a fuller statement of the facts bearing upon the questions I make

than the testimony of any other witness, and as to those facts there is no contradictory testimony.

I also append the statement of James Lennon as to the ownership of the car he was required to take *further South*, as to which there is no contradictory testimony.

71] Ques. What, if any, car or cars had been delivered by any road upon the track of the Lake Shore & Michigan Southern Railway Company at Alexis?

Ans. There were three cars standing there ready to be delivered to the Lake Shore.

Q. They were empty cars or loaded cars?

A. They were empty cars.

Q. Had been delivered onto the Lake Shore road from what road?

A. They were placed on the Ann Arbor "Y" of the Toledo, Ann Arbor and North Michigan Railroad Company.

Q. Is that the place of delivery by the Ann Arbor road to the Lake Shore at that place?

A. Yes, sir.

72] Q. That is the only connection that the companies have at that point, is it not?

A. Yes, sir.

Q. Three cars?

A. Yes, sir.

Q. Do you remember what cars they were?

A. C. L. and W. car 1020; and then there was 9003, Red line, and an F. and P. M. car; the number—I wouldn't attempt to give the number, but I think it was 6330.

Q. Those had been delivered by the Ann Arbor road upon the Lake Shore track at Alexis?

A. No, sir; they were on the Ann Arbor "Y".

Q. What is the custom and practice there for delivery? For instance, cars to be delivered by the Lake Shore to the Ann Arbor, where were those cars to be delivered?

A. The Ann Arbor place them on their siding, or "Y", and the Lake Shore switch out to them; and the Lake Shore place

theirs on the same "Y". The "Y" is the connection of the two roads.

Q. Cars that are for delivery by the Lake Shore to the Ann Arbor road are placed where?

A. Upon the "Y" between the two roads, or the switch connecting the two roads.

Q. And cars for delivery by the Ann Arbor to the Lake Shore Company are placed where?

A. Upon the same place; are reached by the same track.

Q. Are there tracks designated there for the delivery of cars?

A. It has never been pointed out to me as such.

Q. These cars were to be delivered to the Lake Shore road?

A. Yes, sir.

Q. What, if anything, do you know about those cars being ordered to be taken by that train bound South from Detroit?

A. I saw the message to the conductor to pick up a car.

Q. Will you give us the name of the conductor?

A. Willitts, I believe. To pick up one car—9003, Red line—and pull to West Toledo, and I also saw the billing for the car.

Q. How soon after that—upon the arrival of that train did you see the conductor?

A. Shortly after; yes, sir.

Q. Did you see the engineer Lennon?

A. Not until they pulled up across the Ann Arbor crossing.

Q. After the arrival of the train, then—describe the movements of the train at Alexis.

A. Well, the train arrived and stopped, as customary, perhaps a hundred feet before they reached the Ann Arbor crossing, and the semaphore was set for orders, and their brakeman came up to see what was to be done—whether there were orders or cars to go, and the operator or the agent there showed him what there was to go, and he read the message. He said he would wait until the conductor came up and let him take action.

Q. Perhaps it would be proper for you to state what was said, but now just describe the movements of the train.

73] A. Well, after the conductor come up—

Q. The brakeman came up?

A. Yes, but he did nothing with the orders. The conductor came up and, I think, swung the train ahead, and it pulled up across the Ann Arbor crossings and stopped opposite the telegraph office, and at that time I had left the office. I did'nt know what transpired until I came back to the engine. The C., L. & W. car was a cripple, and I had it jacked up for the purpose of repairing it. After I saw what there was to go I went over to examine this crippled car to see if it was in a fit condition to do the switching necessary to get the car out and came back to the engine as it stood opposite to the station. I think at that time the conductor was inside of the engine. I was near the engine when he went in.

Q. State what transpired at that time?

A. There was some escaping steam about the engine, and I could'nt tell word for word what transpired upon the engine. I should judge—

Q. It is not proper for you to state what you should judge, but state what you heard?

A I know, substantially, it was that the engineer, before he would take the car, he would quit his job there.

Q. What, if any, conversation did you have then with him?

A. I stepped up to the engine and handed him a copy of this order.

Q. With the notice attached to it signed by Mr. Canniff?

A. Yes, sir; I gave him one, and also the fireman.

Q. Duplicates of the order that you have produced in Court?

A. Exactly like the one I have just handed you.

Q. What time of day was this?

A. About 10:15.

Q. In the morning?

A. Yes, sir.

Q. Just state what transpired between you and the engineer or fireman at that time, or both?

A. I handed him these papers and he said he had seen the order; that it was posted somewhere; I think in the round

house; I think at Detroit. I would'nt say positive as to that, but he said he had seen a copy of it.

Q. Do you know whether the order had been posted at Detroit and at Monroe?

A. I don't know. There was nothing more transpired there. The engineer merely had nothing to say. He did'nt talk then.

Q. What did he say when you asked him if he had seen the order?

A. I didn't ask him if he had seen it. I simply handed it to him, and he said "We understand the order," or "We have seen the order," or words to that effect. Then I went back into the telegraph office.

Q. Were the cars moved that morning?

A. No, sir?

74] Q. How long was the train kept at Alexis?

A. It departed at 3:18, I think.

Q. Was the car hauled afterwards—put into the main?

A. Yes, sir.

THE COURT:

Q. This was in the morning at what time?

A. The operator reports the arrival of the train at 10:07, and the train departed at 3:15 or 3:18.

MR. POTTER:

Q. What did that train consist of?

A. I couldn't say as to that.

Q. Generally?

A. Oh, it had, perhaps, 25 or 30 cars.

Q. Do you know whether they were sealed—loaded cars or empty?

A. I could not tell whether they were box cars or *flat* cars.

Q. Did you have any conversation at all with the fireman?

A. No, sir; nothing more than what would naturally occur. I had my work to do, and I went on and done it.

Q. What did the enginneer do? Did he remain upon his engine or leave it?

A. He remained upon the engine for a while and then came into the office. Messages were sent back and forth. I guess he was in the office a couple of times.

Q. Where did the train stand in the meantime?

A. The engine at that time was standing right opposite the telegraph office until it was otherwise ordered.

Q. Upon the main track or the side track?

A. The main track.

Q. The south bound main track?

A. There is only one.

Q. How long did it remain upon that track?

A. Now, I couldn't exactly state, but I think perhaps 10:50 or 11 o'clock that the train got orders for some other train to pass it or meet it there or something.

Q. The train got orders to get out of the way for some other train?

A. Yes, sir.

Q. The train was then moved where?

A It was backed up on the siding north of the Ann Arbor crossing.

Q. Who performed that service?

A. The engineer, I believe; I didn't watch.

Q. How long did the train remain there?

A. The train staid there until perhaps 2:30, perhaps 2:45; it was very nearly three o'clock.

Q. Then, it finally departed?

A. Yes, sir; the engine was cut off and they came up to the telegraph office to avoid so much walking.

75] Q. Who brought the engine up to the telegraph office?

A. I couldn't say whether it was the engineer or the fireman.

Q. Did you see the engineer and fireman there on the engine?

A. Yes, sir.

THE COURT:

Q. Do I understand that the train went on without the car?

A. No, sir.

MR. POTTER:

Q. And that engineer and fireman finally brought the car, left out—

A. At 3.18 I think, was the recorded time.

Q. Did you see or know of messages to Alexis in reference to the raising of the so-called boycott? Did you know anything about or see any messages? You understood that there was a boycott in force at that time, didn't you?

A. Yes, sir; there was a message.

Q. Have you a copy of it?

A. Yes, sir.

Q. Let us see it, please. Do you know when that message was received?

A. I do.

Q. What was the hour it was received?

A. The message will show. It was addressed to James Lennon, engineer of 416.

Q. Who was it signed by?

A. J. W. Watson.

Q. Read it, please.

A. "James Lennon, engineer, engine 416: You can come along and handle Ann Arbor cars. J. W. Watson, Committee of Adjustment!" It is dated on the 18th. and received at 2.30 P. M.

Q. Is that the date when it was sent?

A. Yes, sir; the 3rd month and the 18th day, at 2.30 P. M.

Q. Signed by J. W. Watson.

A. Yes, sir.

Q. Do you know what relation Mr. Watson bore to the Brotherhood of Locomotive Engineers?

A. Nothing more than what the prefix is under his name.

Q. Please read what is under his name.

A. "G com. of adjustment!"

Q. Were there any other messages, if you know, passing between Mr. Watson and Mr. Lennon, the engineer?

A. No, sir; I know of no others.

Q. Were there any messages passing between the superintendent's office here to Mr. Lennon?

A. Yes, sir.

Q. Have you got copies of those messages and the answers?

A. I have got them all.

Q. I wish you would read the messages that were sent to Mr. Lennon and his answers, if there were any given.

76] A. The first one sent to Mr. Lennon was sent from Toledo on the 18th—March 18th—"To James Lennon, engineer, engine 416, Alexis."

Q. Give us the hour.

A. I can't state as to that. The original was delivered to the engineer and, by an error of the operator he didn't keep a copy. This is a copy made I believe as near as he can from the original. I don't know as to the hour.

Q. Give us the substance.

A. "Will you bring your train to Air Line Junction if order to take the car from the Toledo, Ann Arbor and Northern Michigan is recailed? S. S. H."

Q. What is the next? Was there any answer to that?

A. Yes, sir.

Q. Give the answer.

A. "To S. S. H.; Toledo, March 18th. Yes; I will take my train to L. J. all right" L. J., *I understand*, I understand is the office called Air Line Junction—at 11.01 A. M.

Q. Signed what?

A. Signed Lennon.

Q. What was the next communication, if any?

A. The next message was—the time is not given on this one, but it was, I presume, about 11 o'clock. It is dated at Toledo.

Q. Addressed to whom?

A. To J. Lennon, engineer, engine 416. It reads this: "This company has been notified by the court that we must handle interchanged business with the T., A. A. and N. M. railway. The car you refused to take having been on regular course of business, I must insist on its being taken. Answer. (Signed) S. S. H."

Q. What was the answer?

A. There was no answer.

Q. What, if anything, do you know about its being delivered to engineer Lennon?

A. I know that the conductor got it; he went out to the engine with it.

Q. What reply, if any did the conductor make?

MR. HURD:

It don't make any difference, so far as this case is concerned, what reply the conductor made.

THE COURT:

Unless he was acting for the engineer.

MR. HURD:

Then you must prove that.

MR. POTTER:

We will withdraw that at present.

Q. What, if any, further messages passed to or were sent to engineer Lennon?

A. There wasn't any more to or from the engineer.

Q. Did you have any conversation with Mr. Lennon after that?

A. No sir.

Q. Who were present when you delivered to the engineer and to the fireman copies of the printed order and the notice given by Mr. Canniff?

A. Mr. John Keegan.

Q. And what relation did he hold to the company?

77] A. He was head brakeman on the train in question.

Q. Mr. Lennon, the engineer, afterwards brought the train with the Ann Arbor car down to Air line Junction?

A. He left the yard with it; I suppose he did.

Q. That was after the receipt of Mr. Watson's message to him?

A. Yes, sir.

Cross examination by Mr. Southard:

Q. You didn't hear distinctly the conversation between the conductor and Mr. Lennon when you came out to the engine after it had arrived?

A. No sir, I didn't.

Q. Did you hear any of the conversation that first took place between Mr. Lennon and the conductor?

A. Not directly to the conductor, I don't think, no sir.

Q. Do you know with whom his first conversation was after he had received the order?

A. No, I don't. I was out there with this crippled car.

Q. A when you did get there the escaping steam and noise made it impossible for you to hear distinctly?

A. Yes sir.

Q. Did you hear Mr. Lennon say about that time that he would take the engine to Air line Junction or any place else that was desired, or the train?

A. No sir; I saw his message.

Q. I am talking now about the time that the train arrived at Alexis after he came over to the office where you were, and before either of these messages which you have described were received, did you hear him say anything what he would do with the engine and train if it was desired?

A. No; I can't say that I remember any conversation on that line.

Q. Now, the last message which you have described as a company message and Mr. Watson's message were received about the same time?

A. The one in reference, signed by Mr. Hand, in regard to the company's insisting on that car going?

Q. Yes.

A. And Mr. Watson's message?

Q. Yes.

A. I think they were a few minutes apart.

Q. Isn't it a fact that they were handed to Mr. Lennon, the engineer at the same time?

A. I couldn't say—no, I don't think they were. I wouldn't attempt to say positively; no, sir.

Q. This was an empty car?

A. Yes sir.

Q. Do you know where it was billed?

A. It was billed to West Toledo.

Q. Do you know what it was being taken down there for?

A. I do not.

78] Q. Did you hear him talk with anybody else except yourself and the conductor?

A. Why, the boys were all talking in the office.

Q. Was Lennon in the office about that time?

A. About what time?

Q. Near the time that he arrived?

A. He came into the office shortly after he received the order to take the car.

Q. Shortly after that?

A. Yes, sir.

Q. Now, that order that you handed to him was not the order that was upon the bulletin-board?

A. I didn't see the one on the bulletin-board.

Q. Did you see any upon the bulletin-board?

A. No, sir.

Q. I understood you to say that there was an order upon the bulletin-board?

A. I didn't say that; I said he stated that he had seen the order. He stated when I handed him this order, before he read it, that he understood it; that he had seen something of that kind.

Q. At Detroit?

A. No; I don't say positively that he said Detroit. I think he stated that he saw it on the bulletin-board some where—at the round house in Detroit or Toledo.

Q. Do you know when he left Toledo to go north upon that train?

A. I don't know.

Q. He must have left some time the day before?

A. I don't know when he left.

Q. Do you know how far north he had been?

A. No, sir.

Q. Were you personally acquainted with Mr. Lennon?

A. I never saw him before, to my knowledge.

Q. The notice which you handed to him after his talking with the conductor, did it have anything attached to it— was it signed by any officer or officers of the company?

A. It did.

Q. Where did you get that notice?

A. It was furnished—the nightman in charge of the yard there—by the officials of the road, and my attention was called to their being there on the morning of the 18th when I arrived at my work.

Q. During the time that he was there did you hear him say anything about what he was willing to do with the train or engine before the receipt of the message asking him if he would bring his train to Air Line Junction if the order to take the Ann Arbor car was recalled?

A. I don't remember any conversation to that effect.

Q. Did you hear him say that at any time during that day while he was there?

A. No; I don't think—until after the message was received.

Testimony of James Lennon page 158 printed record.

158] Q. What was the reason, you may state to court, that you quit the service of the company?

A. Because the company wanted me to do something that I didn't want to do.

Q. And what was that?

A. To take one empty car from the Ann Arbor road?

Q. And why didn't you want to do it?

A. Well, because I thought if the Ann Arbor road couldn't do justice by their men I couldn't help them out.

Q. What was this car?

A. ☞ An empty Red Line Lake Shore—Red Line.

Q. If you know, what was it taken from Alexis to West Toledo for?

A. I don't know; I couldn't say.

Q. Where was it placed after you got it to West Toledo?

A. We kicked it in on the side track and left it there.

We claim that the testimony referred to which is all the testimony bearing on the question, shows simply that there was a single empty car which belonged to the Lake Shore and Michigan Southern Railway Company which had been used by the Toledo, Ann Arbor and North Michigan Railway Company (the testimony on that question is very meager), and after having been so used, was delivered by the Toledo, Ann Arbor and North Michigan Railway Company at Alexis, a place in Ohio just south of the line, on the "Y" connecting the two roads, being the place where all cars were to be delivered from said Company to said Lake Shore and Michigan Southern Railway Company, by it to be received there. Bradeen page 25, Chillcott page 71. That the delivery of said car or cars, if there were more than one on said "Y", was a delivery to the Lake Shore and Michigan Southern Railway Company, and the Toledo, Ann Arbor and North Michigan Railway Company had nothing further to do with it any more than it would have had if the car had been delivered directly upon the Lake Shore and Michigan Southern Railway Company's own track. Newhall vs. Langdon 39 O. S. 87. 2 Parsons on contracts, Sect. VIII, p. 175. Read from p. 179. 1st ¶.

"If the transportation be the chief thing and the deposit of the goods on a wharf or in a building be for a short time only and merely incidental to the transportation, and the owner of the goods relinquishes them entirely when they are so deposited, then they are so delivered to the common carrier in that capacity, and he is liable for them accordingly." The mere statement of the proposition is sufficient.

That the whole question as between Lennon and the Lake Shore and Michigan Southern Railway Company was simply a refusal on his part to take one of the Lake Shore and Michigan Southern Railway Company's own cars from the place where it had been delivered to it by the Toledo, Ann Arbor and North Michigan Railway Company within the State of Ohio to another place on its own track, also within the State of Ohio, said car being an empty car, and has no reference, whatever, in any way to any question of interchange of commerce between the

Toledo, Ann Arbor and North Michigan Railway Company and the Lake Shore and Michigan Southern Railway Company, and for that reason a judge of the United States Court had no jurisdiction over the subject matter to find him guilty of the alleged contempt or punish him for the same.

SECOND QUESTION.

Did the Court have jurisdiction of the person of the petitioner by reason of his having had sufficient notice of the proceedings and orders set out in the petition?

In this action the injunction was allowed at the commencement of the action and without notice of the application therefor. On that subject we refer the court to the original complaint of the Toledo, Ann Arbor and North Michigan Railway Company against the Lake Shore and Michigan Southern Railway Company, the Michigan Central Railroad Company and others p. p. 3 to 7 of the printed record.

In that record James Lennon is not named.

No summons or other notice of the filing of said complaint or the hearing that was had thereon and no opportunity was offered to him to make any defense or to contradict in any manner the complaints therein made or rebut any testimony offered in support of the charges made in said complaint. Whatever hearing was had upon that complaint was between the complainant the Lake Shore and Michigan Southern Railway Company and the Toledo, Ann Arbor and North Michigan Railway Company.

The complaint for disobedience of the order made therein is made by the Lake Shore and Michigan Southern Railway Company, the Toledo, Ann Arbor and North Michigan Railway Company taking no part therein, which considering all the circumstances of the case, raises the suspicion at least, that that whole proceeding was collusive between said two companies.

It is no sufficient reason for granting an injunction against the employees of a railroad company who are not named in the prayer of the petition for an injunction and are not to be served

by process in said case that serious, immediate and irremediable damage will ensue unless an interlocutory injunction be allowed as prayed for in the bill.

In the first place it is a violation of Equity Rule 23 and secondly the railroad company named in the prayer of the petition is charged with the whole duty required by the mandatory order prayed for.

Our claim is that in that proceeding the court acquired no jurisdiction over the person of James Lennon he not being a party named in the proceeding and no notice of its pendency having been given to him. The whole effect and operation of that injunction, so far as these proceedings are concerned, was upon the Lake Shore and Michigan Southern Railway Company as a corporation, its officers who are a part of the corporation and the other persons named in the complaint and in the order issued thereon as its agents.

That it made it the duty of said railway company to use all due and reasonable means and efforts to prevent the doing of any thing forbidden in that order and procure the doing of anything that is mandatory therein by their employees.

Poertner vs. Russell, et al. 33 Wis. 193. 4 ¶ Syl.

Judge Lyon, on page 202, says: "A party against whom an injunction order has been issued is bound not only to abstain from violating it in person but also to endeavor in good faith to prevent its violation by his agents or employees; otherwise he will be in contempt.

Injunction restraining the defendants and each of them, their agents and attorneys from, etc.—Opinion (202.) "It was his duty to restrain his employees from doing the prohibited act as well as to refrain therefrom himself. A mere passive obedience is not always sufficient."

On failure so to do the company and its officers charged with that duty could be punished for contempt for its disobedience. The remedy of the company against its employees for failing to do what is mandatory in said order, and there is no suggestion in this proceeding of any other disobedience on the part of the employees, is upon their contract with them, for no person as an

employee can be compelled against his will to do what he has not contracted to do or to remain in the service of his employer beyond the time contracted for.

Sickel *vs.* Borden 4, Blatchford 14.

The injunction in this case was against the defendants, restraining them from using a certain improvement, etc., * * by themselves their agents, servants, workmen or employees.

Hall, Judge, says:

"If the injunction had been served on Allen, a workman who had made the change which infringed, and had been directed to the servants, agents, workmen and employees of the defendants and had in terms restrained such servants, agents, workmen and employees, the very serious question would have been presented whether persons not parties to the bill could be restrained under such general assignation, by an injunction issued upon notice only to the parties to the suit. The act of Congress requires notice of an application for an injunction under act then in force.

The prayer for process of subpoena in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the Court may take order thereon, as justice may require upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process."

The testimony in this case shows unequivocally that the company itself had the right to discharge the defendant Lennon, and any other of its employees with or without cause at any time while in its service, and the remedy of the employee so discharged, in case the discharge was under circumstances damaging to him, was a pecuniary compensation. For example, when the engineer in charge of a train was in the middle of a trip, at a station or between stations the company had a right to compel him to leave his train and substitute another engineer in his place. This is a right incident to public transportation; for cir-

cumstances might arise in which the safety of passengers and of freight might be imperiled and irreparable damage done by a single engineer, either through malice, incapacity, intoxication or willfulness, and the measure of his damages, if without cause, would be his regular pay for his trip service and transportation to the starting point.

The corresponding right to quit the service belongs to the employee, and we concede that when an engineer has taken out his train into a position where either the train, its freight or passengers would be imperiled, that he is bound not to quit the service until his train or cars, freight or passengers can be put in a place of safety, until his employer can supply his place by another, for failing to do that he would be criminally negligent and liable to be punished for such negligence.

With that limitation we insist that employees between whom and their employers there is no time contract, have the right, correlative to the right of the company to discharge, to quit the service of the employer at any moment that they please. We claim that a Court of Equity has no power to enforce the unwilling service of an employee to his employer by mandatory injunction.

We further claim that it is the duty of a railroad company, engaged in the transportation of freight and passengers, to provide a sufficient number of skilled employees at all times to meet such emergencies, and on failure so to do, persons injured in person or property have their remedy against them in civil damages.

That until they have shown that they have exhausted every reasonable means to keep on hand such supply of skilled labor to perform their public duties, they themselves fail to do what the public have a right to require of them, and they cannot relieve themselves of that responsibility by asking the intervention of a Court of Equity. To sustain the claim made by the Lake Shore and Michigan Southern Railway Company in this case, on the ground that they are performing a great public duty, would be to reduce their employees to a condition of servitude, which is entirely incompatable with the spirit and

letter of the Constitution of the United States and of every State in the Union.

When the Government shall determine to take possession of interstate traffic by purchase or otherwise and control and manage it, it will be time enough to consider the question of the enlistment of employees under conditions similar to those of enlistment in its regular army.

Gregory vs. Stetson 133 U. S. 579 (586.)

THIRD QUESTION.

Was it beyond the jurisdiction of a Court of Equity to issue the orders made in said case?

If either of the preceding questions is answered in the negative, only one answer can be given to this question, and that is, that the Court had no jurisdiction to issue an order punishing James Lennon for contempt for disobeying the order of injunction issued by the United States District Judge on the 11th day of March, 1893.

First, for the reason that no Federal question was involved in the case. It being solely a question between James Lennon, the employee, and the Lake Shore and Michigan Southern Railway Company, the employer, for disobedience of an order requiring him to take one of its own empty cars from a place where it had been placed by another road connecting with it. The other road having done its full duty in the delivery of said car to said Lake Shore and Michigan Southern Railway Company, and nothing remained to be done in regard to it, but for the Lake Shore and Michigan Southern Railway Company to take it and transport it to another station on its own road, also in Ohio; therefore, no question of interstate commerce was involved.

Second. The defendant James Lennon was not a party to the proceeding in which the mandatory injunction had been issued, nor had the mandatory order or any other order or process of said Court in said case been served upon him.

In re Sawyer 124 U. S. p. 200 (221 and 222).

Gregory *vs.* Stetson 133 U. S. 579 (587).

Barthe vs. Larquie, Supreme Court of Louisianna 7th Southern Reporter 80. Case an injunction was issued against Bernard Barthe prohibiting him from carrying on a private market at a particular place in the City of New Orleans on the ground that it was in the prohibited limits. E. J. Barthe was arrested for contempt in keeping such a market as was prohibited by the ordinance. He was not named as a party to the suit. Defence was that he was not a party to the suit. Held that one who was not a party to a suit in which an injunction was issued and to whom such injunction is not directed can not be held for contempt or be punished for the violation of the writ although the act prohibited be illegal in itself.

U. S. S. C. Equity Rule 23 and 47.

Mandatory injunctions.

We claim the rule to be entirely different in mandatory from what it is in prohibitory injunctions.

See Isenberg vs. The East India House Estate Company.

Law Journal 1864 Vol. 33 Equity—Page 392.

This is a case where a building had been erected so as to exclude light and air to complainants building application for mandatory order to remove—refused on the ground that damages could compensate—and ordered an inquiry as to damages.

In our case Lennon was ordered to do a trivial act for which it does not appear that any damage would be suffered, or that and any effort was made on the part of the railroad company to avoid damage—and any inquiry that might have been made after the fact would fail to show that any damage was suffered or anybody injured. The Company could have substituted another engineer to haul the train (the right to do which they had) so far as anything appears in the testimony.

This writ cannot be justified on the theory that a court may compel the rendition of these services by an order in the form of a prohibition, by ordering them not to refuse to do the things to compel which the complaint in the application for injunction was made.

Rogers Locomotive and Machine Works vs. Erie Railway Company, 20 N. J. Equity Reports—5th. C. E. Green 379.

3rd and 5th ¶ Syl.

"An injunction will not be granted to compel a common carrier to transport goods at the rates fixed by law; but it will issue to prevent a railway company, bound by law to transport goods from entering into an agreement not to transport them at the rates fixed by law.

The Chancellor on page 387-388 says:

"A mandatory injunction will not be ordered on a preliminary or interlocutory motion, but only upon final hearing, and then only to execute the decree or judgment of the court. It is only in cases of obstruction to easements or rights of like nature, that maintaining a structure erected and kept as the means of preventing their enjoyment will be restrained, and the structure ordered to be removed as part of the means of restraining the defendant from interrupting the enjoyment of the right. Page 387. But, although the injury is proved, and the subject matter is such that a court of equity will not refuse relief, on the ground that there is adequate relief at law, the question remains, whether the injunction here applied for can be granted, or any part of it. There are injuries which this court cannot redress, although there may be no satisfactory remedy at law, and those which this court can redress, for which no preliminary injunction can issue.

"The two chief objects for which the injunction is asked are to compel the railroad company to return to the complainant its trucks and to compel it to transport the locomotives of the complainant from Patterson to Long Dock at the legal rates of freight. These are to compel the company to act, not to refrain from acting. And the act commanded is the whole duty of the company, and its performance is the whole right of the complainant. It is not the case of a prohibition of keeping up a structure or maintaining some material object, the erection and continuance of which is the act that deprives the complainant of his right, and the destruction or removal of which would restore the enjoyment of it.

"It is contended by the defendants that a mandatory injunction or one which commands the defendant to do some posi-

tive act will not be ordered, except on final hearing, and then only to execute the decree or judgment of the Court, and never on a preliminary or interlocutory motion.

"Or that, if it ever does so issue, it is only in cases of obstruction to easements or rights of like nature in which a structure erected and kept as a means of preventing such enjoyment will be ordered to be removed as part of the means of restraining the defendant from interrupting the enjoyment of the right.

"Although there is some conflict in the authorities and decisions, I am of opinion, after examining into them, that this position with the limitation, is the established doctrine of the courts of equity, and that it is a proper and discreet limitation of the use of the preliminary injunction, as well as sustained by the weight of authority."

2 Daniell's Chancery (4, Ed.) pages 1661-2-3, to Sec. II. and 81 holds the same doctrine substantially.

G. M. BARBER,
of Counsel for Appellant.

Office Supreme Court U. S.
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CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1893.

Term No., 925.

EX PARTE: IN THE MATTER OF JAMES LENNON,
APPELLANT.

APPEAL FROM DECREE OF CIRCUIT COURT OF THE UNITED STATES DENYING APPLICATION FOR WRIT OF HABEAS CORPUS.

GEO. C. GREENE,
Of Counsel for L. S. & M. S. R'y Co.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1893.

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EX PARTE: IN THE MATTER OF JAMES LENNON, APPELLANT.

APPEAL FROM DECREE OF CIRCUIT COURT OF THE UNITED STATES DENYING APPLICATION FOR WRIT OF HABEAS CORPUS.

To the Supreme Court:

As this proceeding is *ex parte* and the Lake Shore and Michigan Southern Railway Company, upon whose representation to the circuit court the proceedings against Lennon were instituted and prosecuted, has not in any manner been made a party to nor been cited or notified to appear in this proceeding now pending, I do not know that I, representing that railway company, have any right to appear or be heard therein.

However, thinking that perhaps the Court might deem it proper for me to submit briefly some suggestions upon questions which may properly be considered by the Court in the determination of the case, I beg leave to submit, subject to the acceptance and approval of the Court, the following.

GEO. C. GREENE,
General Counsel for the L. S. & M. S. R'y Co.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

Ex Parte: In the Matter of JAMES LENNON, Appellant.
Term No., 925.

I.

It is respectfully submitted that an appeal does not lie to this Court from the decree of the circuit court denying the application for *habeas corpus*, or if such an appeal does lie, then only the question of the jurisdiction of the circuit court in the *habeas corpus* proceedings can be certified to or considered by this Court.

The act of Congress creating the circuit court of appeals provides as follows:

"SECTION 4. * * * The review by appeal by writ of error, or otherwise, from the existing circuit court shall be had only by the Supreme Court of the United States or in the circuit courts of appeals hereby established according to the provisions of this act regulating the same." (26 U. S. Stats., 827.)

"SECTION 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases: *In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.* From the final sentences and decrees in prize causes. In case of conviction of a capital or otherwise infamous crime. In any case that involves the construction or application of the Constitution of the United States. In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question. In any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

"SECTION 14. * * * All acts and parts of acts re-

lating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding sections 5 and 6 of this act are hereby repealed."

(For foregoing provisions of statute, see Desty's Federal Procedure, 8th edition, sections 174, 175, and 187.)

The *jurisdiction of the court is not in issue here*, within the meaning of section 5 of the foregoing statute. This "case" is the case instituted and prosecuted by Lennon for a writ of *habeas corpus*, and not the case of the Toledo, &c., Railroad Company against The Lake Shore and other railroad companies, in which the order committing Lennon for contempt was made.

In *that* case the question of jurisdiction was raised and in issue and an appeal therein may be taken to the Supreme Court.

But in *this case*, the application for writ of *habeas corpus*, there is not and cannot be any question as to the *jurisdiction* of the circuit court to grant or refuse the writ.

The appellant seeks in *this* case to attack collaterally the jurisdiction of the circuit court in the *other* case.

When a judgment of conviction and sentence is attacked by *habeas corpus* the attack must be treated as collateral, except where, as in the Supreme Court of the United States, the writ is issued in the exercise of its appellate jurisdiction and is accompanied by a writ of *certiorari* to bring up the record and proceedings of the inferior court, and even then the Court disclaims the right to review mere errors and irregularities.

Ex parte Virginia, 100 U. S., 341.
Ex parte Yerger, 8 Wall., 385.
Ex parte Curll, 106 Wall., 521.
Ex parte Curtis, 106 Wall., 371.

My position upon this question is clearly stated and sustained by the decision of this Court in Carey *vs.* Houston

and Texas Central Railway Company, rendered on the 13th day of November, 1893. The Court, by Chief Justice Fuller, in that case say:

"The judiciary act of March 3, 1891, in distributing the appellate jurisdiction of the national judicial system between the Supreme Court and the circuit courts of appeals therein established, designated the classes of cases in respect of which each of these courts was to have final jurisdiction (the judgments of the latter being subject to the supervisory power of this Court through the writ of certiorari as provided), and the act has uniformly been so construed and applied as to promote its general and manifest purpose of lessening the burden of litigation in this Court.

"The fifth section of the act specifies six classes of cases in which appeals or writs of error may be taken directly to this Court, of which we are only concerned with the first and fourth, which include those cases 'in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision;' and 'any case that involves the construction or application of the Constitution of the United States.'

"In order to bring this appeal within the first of these classes the jurisdiction of the circuit court must have been in issue in this case, and as appeals or writs of error lie here only from final judgments or decrees, must have been decided against the appellants; and the question of jurisdiction must have been certified. We do not now say that the absence of a formal certificate would be fatal, but it is necessary under the statute, and its absence would have perhaps controlling weight where the alleged issue is not distinctly defined. This record contains no such certificate, nor was it applied for, nor does it appear that the jurisdiction of the circuit court was in issue. Appellants by filing their bill invoked the jurisdiction of the court below over the entire case. The defendants did not contest that jurisdiction, and the court adjudicated accordingly. This is conceded, but it is contended that the question of jurisdiction was in issue, because the bill attacked the jurisdiction of the circuit court over the foreclosure suit, or its jurisdiction to make the decree of foreclosure and sale of May 4, 1888, passed in that suit; *but the fifth section of the act of March* 3, 1891, *does not*

authorize a direct appeal to this Court in a suit upon a question involving the jurisdiction of the circuit court over another suit in the same court. It is the jurisdiction of the court below over the particular case in which the appeal from the decree therein is prosecuted that, being in issue and decided against the party raising it, and duly certified, justifies such appeal directly to this Court."

It is respectfully submitted that sections 763 and 764 of the Revised Statutes as amended March 3, 1885, if they gave the right of appeal in such a case as this, have been repealed to that extent by the 14th section of the act creating the circuit court of appeals, above quoted.

I also respectfully submit that section 764 as amended March 3, 1885, does not authorize this appeal. That section provides that "from the final decision of such circuit court an appeal may be taken to the Supreme *in the cases described in the preceding section.*"

I submit that the cases described in the preceding section (763) are *cases in which an appeal may have been taken to the circuit court* from the final decision of any court, justice or judge inferior to the circuit court upon the application for a writ of *habeas corpus* or upon such writ when issued, and not to a case where the application was made in the first instance to the circuit court. (Desty, sections 371, 372.)

II.

The questions certified to this Court by the circuit court are stated at page 203 of the Record and are as follows:

1. Is the suit in which the order was made one arising under the Constitution or laws of the United States?

2. Did the court have jurisdiction of the person of the petitioner by reason of his having had sufficient notice of the proceedings and order set out in the petition?

3. Was it beyond the jurisdiction of a court of equity to issue the orders made in said case?

I submit the following answers to these questions:

First.

The suit brought by the Toledo and Ann Arbor Company in the circuit court arose under the interstate-commerce law of 1887, and was brought solely to enforce compliance with the provisions of that act. The Constitution of the United States gives to Congress exclusive power over the subject-matter of the regulation of interstate commerce, and the statute of 1887, passed in the exercise of that power by Congress, must be enforceable by the courts of the United States regardless of the question whether the statute is declaratory of the common law of the States, or whether like remedies might be obtained in the State courts by enforcement of the common law of the State.

There being no common law of the United States and Congress having seen fit to legislate upon the subject of interstate commerce, the rights secured by the statute must necessarily be protected and enforced by the courts of the United States.

"Seeking protection under the law is a case arising under that law." (Hodgeson *vs.* Millward, 3 Grant, 412; Culp *vs.* Rickets, 3 Grant, 420.)

The statement in the appellant's brief, at page 15, in relation to the allegations in the bill of complaint does not fully cover all the allegations, which show that the suit was brought under and to enforce the provision of the interstate-commerce law, as will be seen upon referring to the bill, at pages 4, 5, and 6 of the Record, and the attention of the Court is particularly directed to that part of the bill, which, it is submitted, clearly shows that the suit was brought for the protection of complainant's right under the laws of the United States, to wit, the interstate-commerce law.

Among the rights conferred by that law was the right to

compel interchange of traffic and require carriers to extend to other carriers certain facilities for such interchange.

The act also imposed not only upon the carrier, but upon its officers, agents, and employés, certain duties in that behalf. The failure to perform such duties and afford to connecting carriers the privileges to which they are entitled under the act would be wrongful and work irreparable injury to complainant, as clearly appears from the allegations contained in the bill of complaint, and the suit was brought to enforce compliance with the law and to prevent the perpetration of the threatened wrong by the defendant companies, their officers, agents, and employés.

The case therefore arose under the laws of the United States, and the remedy at law being inadequate, the aid of the equity side of the court was properly invoked.

"If a statute of the United States created a new right the remedy will be in equity if the relief thereby afforded is in analogy with a species of relief ordinarily given by equity alone."

(Foster's Fed. Pr., 8,) citing 93 U. S., 228; 101 U. S., 216; 105 U. S., 175.

I do not deem it necessary to say anything farther upon this question than to invite the attention of the Court to the opinion of Judge Ricks, at pages 207 and 208 of the Record, and at pages 748 and 749, vol. 54, Federal Reporter, and the opinion of Judge Tafft in the Toledo and Ann Arbor case, at pages 730 and 732, vol. 54, Federal Reporter.

Second.

"Did the court have jurisdiction of the person of the petitioner by reason of his having had sufficient notice of the proceeding and orders set out in the petition?"

Whether the petitioner had notice of the injunction order was a question the determination of which was within the

jurisdiction of the circuit court, and was a question of fact to be determined by that court upon the evidence presented.

The court heard the testimony of the petitioner and several other witnesses, and upon the proofs found as matter of fact and held that he had such notice and knowledge of the injunction order. That finding of the court upon the evidence is not reviewable here. (Cuddy, Pet., 131 U.S., 280-286

"The writ of *habeas corpus* is not to be used to perform the office of a writ of error or appeal." (*Ex parte* Tyler, 149 U. S., 164, 180.)

"As *habeas corpus* does not perform the office of a writ of error or an appeal, the facts cannot be re-examined or reviewed in this collateral proceeding." (*Ex parte* Terry, 128 U. S., 289.)

When the court had jurisdiction of subject-matter and person its judgment cannot be collaterally attacked on *habeas corpus*, although the judgment be erroneous. (Turner *vs.* Conkey, 132 Ind., 248; S. C., 32 Am. St. Rep., 251–256.)

The sufficiency of evidence to support a conviction cannot be inquired into on *habeas corpus* proceedings. (*In re* Haskell (C. C't), 52 F., 795.)

A writ of *habeas corpus* cannot be used as a substitute for a writ of error for the purpose of reviewing alleged errors, either of fact or law, occurring at a criminal trial, but, being in the nature of a collateral attack upon the judgment, is limited to the inquiry whether the trial court has acted without jurisdiction or has exceeded its jurisdiction so as to render the sentence void. (*In re* King (Cir. C't), 51 F., 434.)

In re Frederick, petitioner, 149 U. S., 70, this Court declared the law to be as follows:

"The remedy by *habeas corpus* should be limited to cases in which the judgment or sentence attacked is clearly void by reason of its having been rendered without jurisdiction, or by reason of the court having exceeded its jurisdiction in the premises; and the general rule, and the better prac-

tice, in the absence of special facts and circumstances, is to require the prisoner to seek review by writ of error instead of resorting to the writ of *habeas corpus*."

"The writ of *habeas corpus* is not a proceeding for the correction of errors." (P. 75.)

"The only ground on which this Court or any court, without some special statute authorizing it, will give relief on *habeas corpus* to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause or some other matter rendering its proceedings void."

The circuit court clearly had the power to inquire whether its order had been violated by one who was bound to observe it, and such inquiry would necessarily involve the question of service upon the person charged, or of his knowledge of the order. The circuit court had jurisdiction of the subject-matter to hear and determine whether the petitioner was guilty of contempt. It did in due form hear and determine, and, upon the application for the writ of *habeas corpus*, the *exercise* of that jurisdiction will not be inquired into. The petitioner's remedy, if error exists, is by appeal or writ of error from the decree of the circuit court.

The distinction between *jurisdiction* and its *exercise* is important, and should be clearly kept in view.

In United States *vs.* Arre Dondo *et al.*, 6 Pet., 709, jurisdiction is defined to be "the power to hear and determine a cause. It is *coram judice* whenever a case is presented which brings this power into action. If the petitioner states such a case in his petition that on a demurrer the court would render judgment in his favor, it is an undoubted case of jurisdiction. Whether on an answer denying and putting in issue the allegations of the petition the petitioner makes out his case is the exercise of jurisdiction."

See also Lessee *vs.* Astor, 2 How., 338; *In re* Bozart, 2 Saw., 401; *Ex parte* Watkins, 3 Pet., 203; Church on *Habeas Corpus*, pars. 223 and 225.

It follows that the circuit court could not in this case, on the application for writ of *habeas corpus*, examine the evidence upon which the circuit court had rendered judgment against Lennon and decide whether that evidence showed that he was served with or had sufficient notice of the injunction order, nor whether, when he violated it, he was still in the service of the railway company.

A review upon these questions could only be had by appeal or writ of error in that case and not collaterally in this proceeding.

Those questions relate not to the jurisdiction of the court, but to the exercise of its jurisdiction.

The jurisdiction or power to hear or determine must be inquired into, but where the power exists its exercise will not be inquired into. (Church on *Habeas Corpus*, par. 227; 7 Peters, 568.)

The proceeding instituted by Lennon by this application for writ of *habeas corpus* is a new proceeding, entirely independent of the proceeding to punish for contempt.

"It is a new suit brought by him to enforce a civil right which he claims as against those who are holding him in custody."

Church on *Habeas Corpus*, par. 70.

If, however, the court shall be of opinion that this question is open for consideration and review, it will be found that the evidence fully establishes the finding of the court as stated in the opinion of Judge Ricks, at page 216 of the Record.

The fact is established that he Lennon had notice and knowledge of the injunction order before he refused to receive the Ann Arbor car, by the testimony to which I will briefly refer.

It appears in evidence that immediately after the injunction order was granted and served upon the Lake Shore Company, the Lake Shore Company had copies of the order printed and attached thereto a notice, signed by its superintendent, calling attention of employés to it (Record, page 36), and such printed copies of the injunction and notice were posted, March 13, on all the bulletin-boards at roundhouses where engineers took their engines, and that it was the duty of engineers to examine all notices so posted before starting on their runs.

That on the morning of the 18th March Lennon was upon his engine at Alexis, making a run with his train from Monroe to Toledo. On his arrival at Alexis and before he refused to receive and haul the Ann Arbor car Mr. Chillcote, an agent of the Lake Shore Company, handed to him (Lennon) a printed copy of said injunction order and the notice signed by the general superintendent, and he received and examined them.

Mr. Chillcote says (page 73, Record):

"I handed him these papers, and he said he had seen the order; that it was posted somewhere; I think at the roundhouse, I think, at Detroit. I wouldn't say positive as to that; but he said he had seen a copy of it. * * *

"I simply handed it to him, and he said, 'We understand the order' or 'we have seen the order,' or words to that effect."

Chillcote further says (page 78):

"He stated when I handed him the order, before he read it, that he understood it."

Mr. Keegan testified (page 80) that he was present when the copy order was handed to Lennon, and that he said, "I have seen it before." This occurred about 10 o'clock a. m., and Lennon, after having the copy of the order delivered to him and admitting that he had seen it before and understood it, refused to receive the Ann Arbor car until after 2.30 p. m.,

when he received a telegram from Mr. Watson, an officer of the Brotherhood of Locomotive Engineers, saying, "You can come along and handle Ann Arbor cars" (Record, page 75), he then at once proceeded with his train to Toledo, receiving and hauling the Ann Arbor car. (Record, pages 85, 86.)

Actual service of the order was not requisite. (High on Injunction, sec. 1492.)

Agents having knowledge of order may be held liable for acts in violation. (High, sec. 1435; Wellsley *vs.* Moynton, 11 Beav., 181.)

"It is sufficient for the court to know that the person enjoined had actual notice of its order." (High, sec. 1444; Mead *vs.* Norris, 21 Wis., 310.)

Where injunction issues against the president of a corporation, its officers and members, and is served upon the president in person and is read aloud in the hearing of other officers and members, who afterwards proceed with the performance of the act enjoined, they are guilty of a contempt of court, although never served with process in the cause or with the order of injunction. (High, sec. 1424; Rorke *vs.* Russell, 2 Lans., 242.)

Third.

"Was it beyond the jurisdiction of a court of equity to issue the orders made in said case?"

This question is substantially answered by what I have said in answer to the first and second questions, but the appellant's counsel in his brief claims that the injunction order restrained Lennon from leaving the employment of the company. Such, I insist, is not its meaning, force, or effect, nor was the commitment of Lennon based upon any such construction of the order.

The order enjoined and restrained the defendant com-

panies and their employés from refusing to complainant such equal facilities for interchange of traffic as were enjoyed by other companies, and from refusing to receive from and deliver to complainant cars billed from one State to another.

The order only required the employés while acting as such to discharge these duties. It did not in terms or in effect restrain them from quitting the employment, as the court held in respect to the other persons charged with contempt, but Lennon was held because while still in the employment of the company he refused to obey and violated the order of the court.

It is true that upon the hearing he claimed that he quit the service at Alexis, but the proofs clearly established the fact that he did not, and the court so found as matter of fact. Judge Ricks in his opinion, page 217 of the Record, after referring at length to the testimony, says:

"Upon the facts of the case made against Engineer James Lennon I find that he did not quit the service of the company in fact and did not intend to do so, and that his pretense to do so was a trick to evade the order of the court. Being in the service of the company when he refused to switch the Ann Arbor car into the train at Alexis, and having then full knowledge of the terms and meaning of the order of the court, that order was then in full force and commanded him to do the very thing he refused to do. He therefore deliberately and knowingly violated the mandate of the court and was guilty of contempt."

This finding of fact is fully sustained by the evidence, and I submit is conclusive and not reviewable here.

In the forenoon, after Lennon had refused to receive the Ann Arbor car, the division superintendent of the railway company telegraphed to him, asking, "Will you bring your train to Air Line Junction if the order to take the empty car (the Ann Arbor car) is rescinded?" And to this Lennon

answered, "Yes; I will take my train to Air Line Junction all right. Lennon." (Record, page 83.)

During these four hours, from the time Lennon refused to receive the car until he received the telegram from Watson and proceeded with his train, "business was at a stand-still because he would not go on and haul that car until Watson's message was received. * * * He was willing to take the train, but not so long as he had to take the car." (Record, page 86.)

Lennon's own testimony on cross-examination (pages 159–168) clearly shows that while still in the employment of the company he refused to receive the Ann Arbor car until the boycot was raised and he was advised of the fact by Watson's telegram; that he continued in the employment of the company and took his engine to the round-house on the evening of the 18th after having completed his run, and then and there, upon being told what train he should next take out, said, "All right; I will be up."

When asked on the hearing, "Why did you refuse to haul the train?" he testified, "For the simple reason that I didn't want to go and handle Ann Arbor cars." (Record, page 163.)

Clearly the fact that while he was in the service of the company he violated the order of the court was proven, and it will not be contended that the court has not the power to punish for contempt.

The power to punish for contempt is inherent in all courts, and is expressly given by section 725, United States Revised Statutes.

It is respectfully submitted that the appeal should be dismissed.

GEO. C. GREENE,
Of Counsel for L. S. & M. S. R'y Co.

ADDENDA.

I beg leave to further submit:

That the appellant does not stand in a position where he is entitled to raise the question of want of jurisdiction because of the fact that the plaintiff and one of the defendants, The Michigan Central Railroad Company, were both citizens of Michigan.

In Harrison *vs.* Urann (1 Story's Rep., 64), where a bill in equity was brought against several defendants averring them all citizens of Massachusetts, and two of the defendants put in a plea averring that their codefendant was not a citizen of Massachusetts, it was held that the right to contradict the averment in the bill in this respect, and thus to oust the jurisdiction of the court, was a personal privilege of the codefendant, of which he alone was entitled to avail himself. The court says: "The other defendants have no more right to plead that he is not a citizen of Massachusetts than they would have to plead that he was an infant" (p. 66).

In Hinckley *vs.* Byrne *et al.* (Deady's Rep., 224): Held, such objection is personal, and cannot be made by one defendant for another.

The bill avers citizenship in Ohio of the Michigan Central Company, and that company only could raise the question of its citizenship by plea in abatement (Smith *vs.* Kornothan, 7 How., 198). Had that company raised the question, the suit could be dismissed as to that defendant company and proceed against the other defendants, as that defendant company was not an indispensable party. (Horn *vs.* Lockhart, 17 Wall., 570.)

The court had jurisdiction of the action as against the Lake Shore Company, the appellant's employer.

GEO. C. GREEN,
Of Counsel.